No. 15-648

Title:	V.L., Petitioner v. E.L., et al.
Docketed:	November 17, 2015
Linked with 15A522	
Lower Ct:	Supreme Court of Alabama
Case Nos.:	(1140595)
Decision Date:	September 18, 2015

---Date---	------Proceedings and Orders----------
Nov 16 2015	Petition for a writ of certiorari filed. (Response due December 17, 2015)
Nov 16 2015	Application (15A522) to recall and stay mandate pending the disposition of the petition for a writ of certiorari filed by petitioner V.L., submitted to Justice Thomas.
Nov 18 2015	Application (15A532) to recall and stay mandate pending the disposition of the petition for a writ of certiorari filed by respondent Tobie J. Smith, Guardian ad Litem, submitted to Justice Thomas.
Nov 19 2015	Response to application (15A522) requested by Justice Thomas. (Due Monday, November 30, 2015, by4 p.m. EST.)
Nov 19 2015	Response to application (15A532) requested by Justice Thomas. (Due Monday, November 30, 2015, by 4 p.m. EST.)
Nov 25 2015	Consent to filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for petitioner
Nov 30 2015	Response to application (15A522) from respondent E.L. filed. VIDED.
Nov 30 2015	Response to application (15A532) from respondent E.L. filed. VIDED.
Dec 1 2015	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for respondent E.L.
Dec 1 2015	Reply of applicant Tobie J. Smith, Guardian ad Litem, as representative of three minor children filed.
Dec 1 2015	Reply of applicant V.L. filed.
Dec 2 2015	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from respondent Tobie Smith, Guardian ad Litem.
Dec 4 2015	Order extending time to file response to petition to and including December 29, 2015.
Dec 11 2015	Brief of respondent Tobie J. Smith, Guardian Ad Litem in support filed.
Dec 14 2015	Application (15A522) referred to the Court.
Dec 14 2015	Application (15A532) referred to the Court.
Dec 14 2015	Application (15A522) granted by the Court. The applications for recall and stay of the Supreme Court of Alabama's Certificate of Judgment, in case No. 1140595, presented to Justice Thomas and by him referred to the Court, are granted pending the disposition of the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate

	automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.
Dec 14 2015	Application (15A532) granted by the Court. The applications for recall and stay of the Supreme Court of Alabama's Certificate of Judgment, in case No. 1140595, presented to Justice Thomas and by him referred to the Court, are granted pending the disposition of the petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.
Dec 15 2015	Letter dated December 15, 2015 received from counsel for petitioner waiving 14-day waiting period for the filing of a reply brief pursuant to Rule 15.5.
Dec 16 2015	Brief amici curiae of Conflict of Laws Professors filed.
Dec 17 2015	Brief amici curiae of Donaldson Adoption Institute, et al. filed.
Dec 17 2015	Brief amicus curiae of Constitutional Accountability Center filed.
Dec 17 2015	Brief amici curiae of Thirty-Two Family Law Professors filed.
Dec 17 2015	Brief amici curiae of American Academy of Adoption Attorneys, et al. filed.
Dec 17 2015	Brief amici curiae of Gay & Lesbian Advocates & Defenders, et al. filed.
Dec 17 2015	Brief amici curiae of Family Equality Council, et al. filed.
Dec 21 2015	Brief of respondents E. L. in opposition ...ed.
Dec 29 2015	Reply of petitioner V. L. filed.
Dec 30 2015	DISTRIBUTED for Conference of January 15, 2016.
Jan 19 2016	DISTRIBUTED for Conference of January 22, 2016.
Jan 27 2016	Record Requested.
Feb 5 2016	Record received from the Supreme Court of Alabama and the Alabama Court of Civil Appeals. The records are SEALED.
Feb 8 2016	DISTRIBUTED for Conference of February 19, 2016.
Feb 29 2016	DISTRIBUTED for Conference of March 4, 2016.
Mar 7 2016	Petition GRANTED. Judgment REVERSED and case REMANDED. Opinion per curiam. (Detached Opinion)
Apr 8 2016	MANDATE ISSUED
Apr 8 2016	JUDGMENT ISSUED

15-648

No. ____

Sup. Ct. U.S.
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IN THE

Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Full Faith and Credit Clause permit a court to deny recognition to an adoption judgment previously issued by a court from a sister state, based on the forum court's de novo determination that the issuing court erred in applying its own state's adoption law?

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PETITION FOR WRIT OF CERTIORARI

V.L. petitions for a writ of certiorari to review the judgment of the Alabama Supreme Court.

OPINIONS BELOW

The decisions of the Alabama Supreme Court (App. 1a-35a) and the Alabama Court of Civil Appeals (App. 36a-48a) in *V.L. v. E.L.* are not yet reported in the Southeastern Reporter.

JURISDICTION

The judgment of the Alabama Supreme Court was entered on September 18, 2015. This Court has jurisdiction pursuant to 28 U.S.C. §1257.

INTRODUCTION

In this case the Alabama Supreme Court refused to grant full faith and credit to an adoption judgment duly issued by a court from a sister state, based on its *de novo* determination that the issuing state misapplied its own adoption law. The Alabama Supreme Court's decision flouts a century of precedent on the Full Faith and Credit Clause and will have a devastating impact on Alabama adoptive families. This Court's review of the Alabama Supreme Court's decision is urgently needed.

Petitioner V.L. and Respondent E.L. are two women who were in a committed relationship for nearly seventeen years. In May of 2000, V.L. changed her last name to E.L.'s last name, and the parties decided to start a family together. E.L. gave birth to one child in 2002, and to twins in 2004, through assisted reproduction. E.L. and V.L. took an equal role in

raising the children during their early childhood.

To ensure that both V.L. and E.L. would be legally recognized as the children's parents, the parties agreed that V.L. would adopt the children and become the children's second, legally recognized parent, with E.L. retaining her parental rights. Thus, in 2007, V.L. filed a petition in the Superior Court of Fulton County, Georgia, for V.L. to adopt the children as a second parent with E.L.'s consent. The Superior Court granted the petition and ordered that V.L. would have full parental rights.

Several years later the couple separated and a dispute over child custody arose. V.L. sought joint custody in an Alabama circuit court based on her status as the children's adoptive mother. The Alabama Circuit Court and Court of Civil Appeals concluded that the Georgia adoption judgment must be honored.

The Alabama Supreme Court reversed, refusing to grant full faith and credit to the Georgia judgment. It concluded that the Georgia Superior Court misapplied Georgia's own adoption statute, which, in the Alabama Supreme Court's view, barred V.L. from adopting the children unless E.L. would relinquish her own parental rights. Having found that the Georgia Superior Court misapplied its own state's adoption law, the Alabama court then found that the Georgia court's error was "jurisdictional." Its justification for this conclusion was that adoption is a matter of statute under Georgia law and that a misapplication of an adoption statute must therefore deprive a court of jurisdiction. Based on this determination, the Alabama Supreme Court held that V.L.'s adoption of the children, which the Georgia court

had granted eight years earlier, was not entitled to full faith and credit. In so doing, it effectively stripped V.L. of parental rights over the children she had raised since they were born.

The Alabama Supreme Court's decision is irreconcilable with this Court's Full Faith and Credit precedents. This Court has laid down three fundamental principles under the Full Faith and Credit Clause pertinent to this case. First, although collateral challenges to an out-of-state judgment based on lack of *jurisdiction* are permitted in limited circumstances, collateral challenges to the *merits* of an out-of-state judgment are categorically forbidden. Second, when a court of general jurisdiction issues a judgment, sister state courts must *presume* that the issuing state court had jurisdiction. Third, a jurisdictional determination by a state court is itself entitled to full faith and credit in the courts of other states.

The Alabama Supreme Court's decision contravenes each of those principles. First, the alleged error in the Georgia Superior Court's decision went to the merits, not to jurisdiction; the Alabama Supreme Court's conclusion that the Georgia court lacked jurisdiction was based on a wildly overbroad definition of "jurisdiction" without any basis in this Court's or Georgia's case law. Second, the Alabama Supreme Court failed to honor the presumption that the Georgia Superior Court possessed jurisdiction, instead conducting a *de novo* analysis of Georgia law of a type prohibited by the Full Faith and Credit Clause. Third, the Alabama Supreme Court failed to honor the Georgia Superior Court's decision that it could exercise

jurisdiction over the adoption petition, in plain violation of this Court's Full Faith and Credit precedents.

If allowed to stand, the decision below will carry profound consequences for Alabama families. The Alabama Supreme Court's decision not only has effectively stripped the parental rights of V.L., but also places at risk numerous other families in which parents have relied on the stability of adoption judgments issued by the courts of sister states. As the dissent explained, the decision below "creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." App. 35a.

Because the decision below reflects a grievous misinterpretation of the Full Faith and Credit Clause and has far-reaching practical consequences, the Court should grant certiorari.

STATEMENT OF THE CASE

A. The Georgia Superior Court's Adoption Order

Petitioner V.L. and Respondent E.L. are two women who were in a committed relationship for nearly seventeen years. The parties began their relationship in 1995. In May of 2000, V.L. changed her last name to E.L.'s last name, and the parties decided to start a family together.

The parties decided that E.L. would be the children's biological mother and that the children would be conceived through donor insemination. E.L. gave

birth to one child on December 13, 2002, and gave birth to twins on November 17, 2004. After the birth of each of the children, V.L. took leave from work to be at home and care for the children. V.L. paid the children's pre-school tuition and fees and shared responsibility with E.L. for all household expenses.

In 2007, V.L. petitioned the Superior Court of Fulton County, Georgia for an adoption judgment, with E.L.'s express consent. Following a home study, Judge Jerry Baxter granted the petition in a detailed written order. App. 49a-51a.[1] Under "Findings of Fact," the Superior Court found:

- V.L. "is qualified to petition for adoption and is a fit person to become the adoptive legal parent of" the children, "and is capable of continuing with the responsibilities she has shared with the legal and biological mother, [E.L.], for the children's care, supervision, training, and education." App. 49a.
- E.L. "expressly consented to this adoption." *Id.*
- The record provided "clear and convincing evidence that [V.L.] has functioned as an equal second parent to the children, since their birth" and that "[t]he children relate to

[1] The Georgia Superior Court's adoption order, as well as the complaint and visitation order in the Alabama Circuit Court, contain the parties' full names. Thus, they are filed in a sealed appendix.

both their legal mother and [V.L.] on an equal basis." *Id.*

- "The adoption is in the best interests of the children. It would be inconsistent with the reality of this parenting arrangement to either terminate the rights of the sole legal parent or to deny the adoption by the second parent, which is with the express consent of the legal parent." App. 50a.

Under "Conclusions of Law," the Superior Court held:

- "The adoption should be granted in the best interest of the children. The children should have the legal benefits and protections of both their parents which will accrue as a result of their adoption. It would be contrary to the children's best interest and would adversely impact their right to care, support and inheritance and would adversely affect their sense of security and well-being to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother. The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births." *Id.*
- "The Petitioner has complied with all relevant and applicable formalities regarding the Petition for Adoption in accordance with the laws of the State of Georgia." *Id.*
- Because the children were conceived by anonymous donor insemination, "no biological

or legal father exists with rights requiring termination." *Id.*

In view of these determinations, the Superior Court "CONSIDERED, ORDERED, AND ADJUDGED" that "the parent-child relationship between [E.L.] and the children is hereby preserved intact and that [V.L.] shall be recognized as the second parent of" the children. App. 51a. It was "FURTHER, ORDERED" that the adoption of the children by V.L. "be and is hereby made permanent in accordance with the provisions of Chapter 8 of Title 19 of the Official Code of Georgia, Annotated." *Id.* It was "FURTHER, ORDERED" that a new birth certificate be issued listing both E.L. and V.L.'s names. *Id.* It was "FURTHER, ORDERED" that "this order shall act as sufficient evidence for the Social Security Administration to prepare and issue a new social security card to the children." *Id.*

B. The Alabama Supreme Court's Refusal To Recognize The Adoption Order

In 2011, V.L. and E.L. ended their relationship. Although V.L. continued to see the children for a time after the relationship ended, E.L. eventually prevented V.L. from having access to the children. Thus, on October 31, 2013, V.L. filed a Petition to Enroll Foreign Judgment with the Jefferson County Circuit Court in Alabama, asking the Circuit Court to give Full Faith and Credit to the Georgia adoption judgment and to grant her visitation or custody of her children. App. 53a-56a. On April 2014, the Circuit Court entered an order granting visitation to V.L. on the first and third weekends of each month. App. 52a.

E.L. appealed to the Alabama Court of Civil Appeals. In an initial decision, the Court of Civil Appeals reversed the Family Court's order, but the Court of Civil Appeals granted rehearing, reversed itself, and held that the Georgia adoption was entitled to full faith and credit. App. 36a-48a. The court observed that "[t]he Georgia Supreme Court has not yet construed the provisions of the Georgia Adoption Code to determine if it allows adoption by a same-sex partner who has assumed a de facto parental role." App. 44a. It concluded, based on its "independent review of the Georgia Adoption Code," that such adoptions were impermissible under Georgia law. App. 45a. But it held that "[a]lthough it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court." *Id.* It concluded that "even if the law of Alabama generally disallows adoption by same-sex partners, under the Full Faith and Credit Clause, a court of this state must still enforce a duly entered foreign judgment approving the adoption petition of a same-sex partner." App. 47a (citation omitted). The Court of Civil Appeals remanded the case for an evidentiary hearing on visitation. App. 48a.

The Alabama Supreme Court reversed. It held that the Georgia adoption judgment was not entitled to full faith and credit because, in its view, the Georgia Superior Court lacked subject-matter jurisdiction to enter the adoption judgment. App. 1a-35a.

The court began by rejecting V.L.'s argument that

the Alabama Supreme Court should not entertain E.L.'s jurisdictional attack on the adoption order based on established Georgia law that "a Georgia court would enforce the Georgia judgment *even if* there is a lack of subject-matter jurisdiction." App. 12a. V.L.'s argument was premised on Ga. Code. Ann. § 19-8-18, a statute of repose which provides that "[a] decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree." As the Alabama Supreme Court acknowledged, Georgia courts have held that the statute of repose bars even jurisdictional collateral challenges to adoptions after six months. *Id.* (citing *Williams v. Williams*, 717 S.E.2d 553 (Ga. Ct. App. 2011)). Nevertheless, the Alabama Supreme Court concluded that the statute of repose did not apply in this case because Georgia's statute of repose applied only to adoptions that complied with statutory requirements. App. 16a-17a.

The Alabama Supreme Court further concluded that the Georgia Superior Court erred in granting the adoption. It held that "Georgia law makes no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents." App. 22a. In the view of the Alabama Supreme Court, it was not possible under Georgia law for V.L. to adopt without terminating E.L.'s rights: either V.L. or E.L. could be the children's legal parent, but not both. The court reached this conclusion based on its "own analysis of the Georgia adoption statutes," and despite the Georgia Superior Court's express conclusion that it had

the power to grant the adoption without terminating E.L.'s parental rights. *Id.*

Having found that the Georgia Superior Court misapplied Georgia law in granting the adoption, the Alabama Supreme Court then concluded that the Georgia Superior Court lacked *jurisdiction* to enter the adoption judgment—again despite the Georgia Superior Court's express conclusion regarding its power to grant the petition. The Alabama Supreme Court acknowledged that Georgia law "gives superior courts such as the Georgia court exclusive jurisdiction to enter adoption decrees." App. 24a. However, it cited a Georgia case stating that the requirements of Georgia's adoption statutes "are mandatory and must be strictly construed in favor of the natural parents." App. 23a-24a. The court concluded from this statement that a court that grants an adoption which is not in strict compliance with every provision of the adoption statutes automatically lacks jurisdiction to grant the adoption. App. 24a. Thus, the Alabama Supreme Court found that "[t]he Georgia judgment is accordingly void, and the full faith and credit clause does not require the courts of Alabama to recognize that judgment." *Id.* The Alabama Supreme Court declined to reach E.L.'s arguments that Alabama should refuse to recognize the Georgia judgment because the parties were allegedly non-residents of Georgia and because permitting same-sex parents to adopt conflicted with Alabama's own public policy. App. 24a-25a n.10.

Justice Parker filed a concurring opinion agreeing with the majority's decision on public policy grounds.

He stated that "the State has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother." App. 31a. Justice Parker included a lengthy quotation from *Lofton v. Secretary of Department of Children & Family Services*, 358 F.3d 804, 819-20 (11th Cir. 2004), in which the court upheld Florida's "codified prohibition on adoption by any homosexual person." App. 29a-31a; *see Lofton*, 358 F.3d at 806-07 (quoting Fla. Stat. § 63.042(3)).

Justice Shaw dissented. He argued that the statutory requirements cited by the majority "speak to the *merits* of whether the adoption should be granted—not to whether the trial court obtains subject-matter jurisdiction." App. 32a. He explained that the Georgia Superior Court had statutory jurisdiction over "all matters of adoption," and "[t]he fact that the adoption should not have been granted does not remove the case from the class of cases within that court's power." App. 32a.

Justice Shaw noted that "Georgia's adoption code seems to provide the opposite," given that it grants superior courts the authority to "continue the case" even if "the court determines that any petitioner has not complied with" the adoption code. App. 33a. He also noted that "[u]nder Georgia law, although the trial court may find that the requirements for an adoption were not met, it may nevertheless place custody of the child with the petitioners, an act antithetical to the idea that the court possesses no subject-matter jurisdiction." App. 33a n.14. He concluded by expressing his "fear that this case creates a dangerous

precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." App. 35a.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari. The decision of the Alabama Supreme Court conflicts with a century of this Court's Full Faith and Credit case law and deals a serious blow to the principles of comity and finality underlying the Clause. Moreover, the decision will result in grave practical harm. It yields the ultimate conflict of authority—dueling court orders in different states—and threatens to shatter the legal ties that bind numerous Alabama adoptive parents to their children.

I. THE ALABAMA SUPREME COURT'S DECISION VIOLATES THE FULL FAITH AND CREDIT CLAUSE

A. The Full Faith and Credit Clause Authorizes Collateral Attacks on Out-of-State Judgments Only Under Narrow Circumstances.

Article IV, Section 1 of the Constitution states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." "Regarding judgments, ... the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). A state is constitutionally required to honor a sister state's judgment even if it disagrees with that judgment: there is "no roving 'public policy exception' to the full faith and credit due *judgments*." *Id.* (emphasis in original).

This Court has long recognized the importance of finality of judgments. Finality "is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of

society by the settlement of matters capable of judicial determination." *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 336-37 (2005) (quoting *S. Pacific R. Co. v. United States*, 168 U.S. 1, 49 (1897)). The Full Faith and Credit Clause ensures that judgments, once rendered, are final not only in the state where they were rendered, but nationwide. As this Court has explained, "[t]he animating purpose of the full faith and credit command ... 'was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.'" *Baker*, 522 U.S. at 232 (citation omitted).

This Court has carved out a narrow exception to the Full Faith and Credit Clause: a court need not grant full faith and credit to a judgment issued by a sister state court that lacked jurisdiction. *Id.* at 233. But to ensure that this exception does not swallow the rule, the Court has limited it in three respects.

First, the Court has made clear that only genuinely *jurisdictional* collateral challenges are permissible. Collateral challenges to the *merits* of an out-of-state judgment are categorically forbidden. *See Milliken v. Meyer*, 311 U.S. 457, 462 (1940) (holding that although collateral challenges based on "a want of jurisdiction" are permitted, the Full Faith and Credit Clause "precludes any inquiry in to the merits of the cause of action, the logic or consistency of the decision, or the

validity of the legal principles on which the judgment is based"). The difference between an examination of jurisdiction and of the merits is that jurisdiction "goes to the power," whereas merits goes "only to the duty[] of the court." *Fauntleroy v. Lum*, 210 U.S. 230, 235 (1908).

Second, the Court has adopted a presumption that when a court of general jurisdiction renders a judgment, it has jurisdiction to render that judgment. *See Milliken*, 311 U.S. at 462 ("if the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself") (internal quotation marks omitted). In particular, a court must presume that when a court of general jurisdiction interprets a statute, it has the jurisdiction to do so, and its interpretation is simply a decision on the merits. *Fauntleroy*, 210 U.S. at 235 (where a law "affects a court of general jurisdiction and deals with a matter upon which that court must pass," the forum court must "be slow" to interpret that provision as imposing a limit on the court's jurisdiction, as opposed to fixing a "rule by which the court should decide").

Third, the Court has held that even *jurisdictional* collateral attacks are barred by the Full Faith and Credit Clause if the issuing court made a jurisdictional determination that is itself entitled to *res judicata*. "The principles of *res judicata* apply to questions of jurisdiction as well as to other issues." *Underwriters Nat'l Assur. Co. v. N.C. Life & Acc. & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706 (1982) (quotation marks

omitted). Thus, this Court has held that where "both parties were given full opportunity to contest the jurisdictional issues" and the judgment is "not susceptible to collateral attack in the courts of the State in which it was rendered ... the requirements of full faith and credit preclude the courts of a sister State from subjecting such a decree to collateral attack." *Coe v. Coe*, 334 U.S. 378, 384 (1948). This principle applies to any litigant who had the opportunity to contest jurisdiction, regardless of whether that litigant actually did: "A party cannot escape the requirements of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding." *Underwriters*, 455 U.S. at 710.

B. The Alabama Supreme Court Should Have Given Full Faith and Credit to the Georgia Judgment.

The Alabama Supreme Court's decision violated this Court's Full Faith and Credit precedents in numerous respects.

First, the alleged error in the Georgia Superior Court's adoption order went to the merits, not to jurisdiction. Georgia law provides that superior courts have "exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19-8-2(a), and the Alabama Supreme Court observed that it was "undisputed that Georgia superior courts like the Georgia court have subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." App. 19a. Thus, the Georgia Superior Court plainly had the power to *adjudicate* the parties' adoption petition. That should have been the end of the matter for purposes of the Full Faith and

Credit Clause. Whether the Superior Court's decision to *grant* V.L. an adoption was correct, or whether it was legally required to strip E.L. of her parental rights as a condition for granting V.L. an adoption, is a classic argument that went to the merits of the case, not the power to decide it.

This Court's recent cases distinguishing "jurisdiction" from "merits" confirm that Georgia's provision for terminating an existing parent's rights is non-jurisdictional. As this Court has explained, "[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. ... But when [the legislature] does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515-16 (2006) (footnote and internal quotation marks omitted). The Court has repeatedly applied that principle in recent years, holding that statutory preconditions to relief were non-jurisdictional. *See, e.g.*, *Morrison v. Nat'l Australia Bank, Ltd.*, 561 U.S. 247, 253-54 (2010) (territorial requirement in securities fraud statute is non-jurisdictional); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271-72 (2010) (requirement that bankruptcy court find undue hardship before discharging student loan debt is non-jurisdictional); *Arbaugh*, 546 U.S. at 515-16 (15-employee requirement under Title VII is non-jurisdictional). Here, there is nothing approaching a clear statement in Georgia law establishing that terminating an existing parent's

parental rights when a second person adopts her child is a jurisdictional prerequisite to granting an adoption. The Alabama Supreme Court had no basis for characterizing the Georgia Superior Court's decision as containing a jurisdictional defect.

Other features of Georgia law confirm that the Georgia Superior Court had jurisdiction to grant the adoption petition. As the dissent pointed out, Georgia law permits a Superior Court to continue a case, and even grant custody, *even if it concludes that the statutory requirements for an adoption are not met.* App. 33a & n.14. These provisions are irreconcilable with the view that the Georgia Superior Court lacked jurisdiction over the parties' petition for adoption. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause" (quotation marks omitted)).

Second, if the Alabama Supreme Court had any doubt as to whether the termination provision was jurisdictional or rather simply established a legal rule, it was constitutionally obligated to apply a *presumption* that the Georgia Superior Court had jurisdiction to grant V.L.'s adoption petition. It is undisputed that the Georgia Superior Court is a court of general jurisdiction that has "subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." App. 19a. Under the Full Faith and Credit Clause, it is therefore presumed to have had jurisdiction to grant an adoption to V.L. *Milliken*, 311 U.S. at 462.

Nothing in Georgia law comes close to undermining this presumption. Nothing in the Georgia Code states that termination of an existing parent's parental rights is a jurisdictional prerequisite to granting an adoption to a second parent. Nor has any court ever adopted such an interpretation of the Georgia Code. The Superior Court judge in V.L.'s case certainly saw no jurisdictional impediment to granting the adoption; to the contrary, that court expressly concluded that it had the power to grant the petition without terminating E.L.'s parental rights. And there are no reported cases of any other Superior Court judges who have concluded they lack jurisdiction to grant such adoptions.

Nor is there any appellate authority in Georgia adopting such a holding. The Alabama Supreme Court relied on Justice Carley's dissent from denial of certiorari in *Wheeler v. Wheeler*, 642 S.E.2d 103 (Ga. 2007), in which a trial court *refused* to set aside an adoption by a second parent, and the Georgia Supreme Court denied discretionary review. App. 16a-17a. That dissent by definition did not obtain the votes of the majority of the court, and it acknowledged that "[t]here is not any appellate opinion addressing same-sex adoptions in Georgia, even though they have been permitted at the trial court level in certain counties." 642 S.E.2d at 104. Nor did Justice Carley suggest that the trial court lacked *jurisdiction* to grant the adoption; to the contrary, Justice Carley argued that the adoption was subject to challenge under Ga. Code Ann. § 9-11-60(d)(3) because it contained a "nonamendable defect," which under Georgia law, is an error on the *merits*. *See id.*; *compare* § 9-11-60(d)(3) (permitting

collateral attack based on "nonamendable defect") *with* § 9-11-60(d)(1) (permitting collateral attack based on "[l]ack of jurisdiction over ... the subject matter").

The Alabama Supreme Court also relied on dicta in *Bates v. Bates*, 730 S.E.2d 482 (Ga. Ct. App. 2012). App. 21a. But in that case, the court *denied* a collateral challenge to an adoption similar to V.L.'s. The challenger had already filed one collateral challenge to the adoption which was unsuccessful, and the Court of Appeals held that a second collateral challenge to the adoption was barred by *res judicata*. *Id.* at 486. The court made clear that it was "decid[ing] nothing in this case about whether Georgia law permits a 'second parent' adoption," *id.*, and certainly decided nothing about whether such adoptions are void for lack of jurisdiction.

In sum, there is no Georgia authority that would defeat the presumption that the Superior Court had jurisdiction to allow V.L. to adopt her children. The Alabama Supreme Court had no warrant to disregard the Georgia Superior Court's order based on its *de novo* examination of Georgia law.

Third, the Alabama Supreme Court's reasoning for its holding that the Georgia Superior Court lacked jurisdiction was indefensible under this Court's Full Faith and Credit precedents. The Alabama Supreme Court held that any failure to strictly apply every provision of a state's adoption law renders the adoption judgment void. In reaching this conclusion, the Alabama Supreme Court cited *In re Marks*, 684 S.E.2d 364, 367 (Ga. Ct. App. 2009), for the proposition that "[t]he requirements of Georgia's adoptions statutes are

mandatory and must be strictly construed in favor of the natural parents." App. 23a-24a. It also cited an Alabama case holding that "[i]n Alabama, the right of adoption is purely statutory and in derogation of the common law." App. 24a. Based on that authority, the Alabama Supreme Court held that a statutory error in granting an adoption deprived the granting court of jurisdiction.

This reasoning is flawed. The Alabama Supreme Court had no basis for transforming a requirement that a statute be construed strictly[2]—which is a principle of statutory interpretation—into a rule that a deviation from such a statute is a jurisdictional defect. Such a rule would dramatically expand the scope of permissible collateral attacks on out-of-state judgments, in direct contravention of the principles

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[2] Moreover, that requirement does not even apply to this case. *Marks* held: "The requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents, *because the application thereof results in the complete and permanent severance of the parental relationship.*" 684 S.E.2d at 367 (emphasis added). Thus, under *Marks*, the "strict construction" requirement does not apply to this case, because the very statutory defect that E.L. was complaining about was that the adoption judgment did *not* sever her parental relationship. Indeed, other Georgia courts have explained that the provisions of the Georgia Code which allow for third-party adoptions and stepparent adoptions, Ga. Code Ann. §§ 19-8-5(a) and 19-8-6, are to be *liberally* construed to meet their primary purpose of protecting their best interests. *See, e.g., In re J.S.G.*, 505 S.E.2d 70, 71 (Ga. Ct. App. 1998) (liberally construing stepparent adoption statute to find that former stepfather could petition alone to adopt stepchild even after he was no longer married to child's mother).

underlying the Full Faith and Credit Clause. It is exceedingly common for state courts to find that state statutes are in derogation of the common law, and must be strictly construed. *See, e.g., Shine v. Moreau*, 119 A.3d 1, 10 (R.I. 2015) (holding attorney fees recovery statutes had no common law analog, and therefore must be strictly construed); *Carlton v. State*, 816 N.W.2d 590, 605 (Minn. 2012) (holding that wrongful death statutes had no common law analog, and therefore must be strictly construed). Thus, the Alabama Supreme Court's reasoning would imply that *any* judgment based on *any* such claim is subject to collateral attack if the issuing court deviated from any statutory requirements. Such a holding would create a massive loophole in the Full Faith and Credit Clause.

Even assuming the Alabama Supreme Court's ruling is confined to the adoption context, it reflects a misapplication of Full Faith and Credit principles. The Alabama Supreme Court's was premised on Georgia's strict-construction requirement, which applies to *all* Georgia adoptions. Thus, in effect, the Alabama Supreme Court held that *any* statutory defect in an adoption necessarily means that the rendering court lacked jurisdiction. This holding has no basis in law. Adoption judgments warrant the full protection of the Full Faith and Credit Clause. *See, e.g., Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007) (invalidating Oklahoma statute barring recognition of same-sex couple adoptions because such adoptions are entitled to full faith and credit). There is no legal or practical basis for singling out adoptions as uniquely unworthy of full faith and credit.

To the contrary, legislatures nationwide have consistently recognized that adoptions require *more* protection from collateral attacks than other types of judgments, in light of "the compelling public interest in the finality and certainty of judgments, ... an interest that is especially compelling with respect to judgments affecting familial relations." App. 14a (quoting *Bates*, 730 S.E.2d at 483). For example, Georgia has an adoption-specific provision barring even *jurisdictional* attacks on adoptions after six months. *See* Ga. Code Ann. § 19–8–18(e); *Williams v. Williams*, 717 S.E.2d 553 (Ga. Ct. App. 2011). Alabama similarly prohibits virtually any kind of attack on an adoption after one year has passed. Ala. Code § 26-10A-25(d). Most states have similar limitations on collateral attacks in adoption cases. *See* 2 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases* § 14:28, n.1, Westlaw (database updated Nov. 2014) (collecting statutes). The Alabama Supreme Court's rule that statutory requirements for adoptions are automatically jurisdictional is not only legally baseless, but undermines the nationally-recognized public policy in ensuring the finality of adoptions.[3]

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[3] The Alabama Supreme Court concluded that Georgia's bar on collateral attacks did not apply to this case because it applied only when an adoption *complied* with statutory requirements—the precise situation in which it is not needed. App. 14a-17a. This reasoning was not only an exceedingly dubious interpretation of the Georgia statute, but it overlooked a critical point: given that Georgia and numerous other states have enacted statutes granting adoption *heightened* protection from collateral attack, it makes no sense to hold that any statutory defect in an adoption is a

Fourth, even if the Georgia Superior Court's decision not to terminate E.L.'s parental rights could be characterized as a jurisdictional defect—which it cannot—the Alabama Supreme Court was *still* constitutionally barred from overturning the Georgia Superior Court's adoption order. This Court has repeatedly held that jurisdictional determinations, like any others, are entitled to full faith and credit. *See supra* at 15-16.

Here, the Alabama Supreme Court's should have given full faith and credit to the Georgia Superior Court's decision to exercise jurisdiction over V.L.'s adoption petition. The Georgia Superior Court specifically addressed the fact that E.L.'s parental rights were not being terminated, and expressly made the "conclusion[] of law" that "[i]t would be contrary to the children's best interest ... to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother. The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births." App. 50a. It found that "[t]he Petitioner has complied with all relevant and applicable formalities regarding the Petition for Adoption in accordance with the laws of the State of Georgia." *Id.* Even if this determination could be characterized as "jurisdictional," the Alabama Supreme Court owed full faith and credit to the Georgia Superior Court's determination of its own jurisdiction. *Coe*, 334 U.S. at 384. E.L. did not raise

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"jurisdictional" error that permits a collateral attack in the courts of any other state.

her jurisdictional objection in the Georgia Superior Court; to the contrary, she affirmatively asked the Superior Court to grant the adoption. Thus, E.L. participated in the adoption and had every opportunity to raise the jurisdictional arguments she now raises, and her failure to raise these arguments in 2007 does not entitle her to raise these arguments in 2015. *Underwriters*, 455 U.S. at 710 ("A party cannot escape the requirements of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding.").

Further, the Georgia Supreme Court has repeatedly held that a prior judgment determining parental rights cannot be challenged later by a parent who participated in the prior litigation, even if the issuing court did not have subject matter jurisdiction, because the public interest in family stability requires finality of these judgments. *Amerson v. Vandiver*, 673 S.E.2d 850, 851 (Ga. 2009) (holding that where a father agreed to termination of his parental rights in a divorce proceeding, he could not move to set aside the order even though the Georgia Superior Court had no subject-matter jurisdiction to terminate parental rights in the context of a divorce); *Marshall v. Marshall*, 360 S.E.2d 572 (Ga. 1987) (holding that where husband participated as a plaintiff in a divorce action, he could not later argue that the court lacked subject-matter jurisdiction). Moreover, in *Bates*—a case cited by the Alabama Supreme Court majority—the panel included a footnote strongly implying that Georgia law would prohibit a collateral attack on an adoption under circumstances indistinguishable from this case. 730

S.E.2d at 486 n.5 ("To some of us, it seems that the present attack upon the validity of that decree amounts to an attempt to play the courts for fools, and that is the sort of thing that judges ought not tolerate."); *see also id.* at 483 (noting that the "compelling public interest in the finality and certainty of judgments" may prevent a collateral attack based on jurisdiction (citing *Abushmais v. Erby*, 652 S.E.2d 549 (Ga. 2007)). The Alabama Supreme Court's decision to disturb an adoption that could not have been disturbed in the courts of Georgia was blatantly unconstitutional. *Underwriters*, 455 U.S. at 704 (under the Full Faith and Credit Clause, Alabama was required to give the Superior Court's judgment "the same credit ... which it had in the state where it was pronounced") (quotation marks omitted).

Finally, although the majority opinion in this case declined to reach E.L.'s argument that the Alabama Supreme Court could deny recognition of the Georgia judgment for public policy reasons, App. 24a-25a n.10, there is reason to be concerned that the Alabama Supreme Court's departure from full faith and credit precedent reflects a public policy objection to adoption by a parent's same-sex partner. Justice Parker's concurring opinion stated that the state "has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother." App. 31a. He relied on *Lofton*, 358 F.3d at 819-20, in which the court upheld Florida's "codified prohibition on adoption by any homosexual person." *Id.*; *see Lofton*, 358 F.3d at 806-07 (quoting Fla. Stat. § 63.042(3)).

Yet there is no roving 'public policy exception' to the full faith and credit due *judgments*," and the "Full Faith and Credit Clause ordered submission ... even to [the] hostile policies reflected in the judgment of another State." *Baker*, 522 U.S. at 233 (quotation marks omitted, ellipses in original). It was impermissible for Justice Parker or any other member of the Court[4] to rely on these views as a basis to deny full faith and credit to a sister state's judgment.

II. THIS CASE IS WORTHY OF THIS COURT'S REVIEW.

The Court should grant certiorari and reverse the Alabama Supreme Court's judgment. The decision

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[4] Other members of the Alabama Supreme Court have expressed strong views on the public policy issues presented by this case. For instance, Chief Justice Moore, who joined the majority opinion, has previously opined that "the homosexual conduct of a parent ... creates a strong presumption of unfitness that alone is sufficient justification for denying that parent custody of his or her own children or prohibiting the adoption of the children of others." *Ex Parte H.H.*, 830 So. 2d 21, 26 (Ala. 2002) (Moore, C.J., concurring). He reasoned that "[h]omosexual conduct is, and has been, considered abhorrent, immoral, detestable, a crime against nature, and a violation of the laws of nature and of nature's God upon which this Nation and our laws are predicated. ... It is an inherent evil against which children must be protected." *Id.*; *see also Ex parte State ex rel. Alabama Policy Institute*, No. 1140460, – So. 3d –, 2015 WL 892752 (Ala. Mar. 3, 2015) (directing Alabama officials not to issue same-sex marriage licenses, even after federal district court invalidated Alabama's prohibition on same-sex marriage); *id.* at *28 & nn.19-20 (suggesting that legalization of same-sex marriage would necessitate the complete invalidation of Alabama marriage law).

below is an unprecedented departure from foundational full faith and credit principles. Moreover, it has profound practical consequences that warrant this Court's review.

A. The Decision Below Is An Unprecedented Application Of The Full Faith and Credit Clause.

The Court should grant certiorari in this case because it is a gross deviation from case law from this Court and other jurisdictions applying the Full Faith and Credit Clause, both to judgments generally and to adoptions specifically.

As explained above, this Court has made clear that the circumstances under which an out-of-state judgment may be disregarded are exceedingly narrow. Although collateral attacks based on lack of subject-matter jurisdiction are permitted under limited circumstances, courts are constitutionally barred from questioning the merits of out-of-state judgments, and constitutionally required to presume that courts of general jurisdiction possessed jurisdiction of cases before them. *Supra*, at 14-15. In light of these limitations, only two modern Supreme Court cases have authorized a collateral attack on a state-court judgment for lack of subject-matter jurisdiction: *Williams v. North Carolina*, 325 U.S. 226, 231 (1945), in which the Court upheld a collateral attack on a state-court divorce issued to a non-domiciliary because domicile is constitutionally required for divorce jurisdiction, and *Kalb v. Feuerstein*, 308 U.S. 433, 438-39 (1940), in which this Court upheld a collateral attack on a state-court judgment on a claim that could be

heard only in federal court.[5] Thus, *Williams* and *Kalb* held that the state court lacked subject-matter jurisdiction because it was the wrong *forum*: in *Williams* the divorce should have been issued by the court in the couple's home state, while in *Kalb* the judgment should have been issued by a federal court.

As in this Court, successful collateral attacks in lower courts on out-of-state judgments for lack of subject-matter jurisdiction are very rare. And attacks that have succeeded share a common thread: like in *Kalb* and *Williams*, in such cases, the courts have upheld the collateral attack on the ground that the rendering court lacked power to issue a judgment because that power was lodged in the courts of a different jurisdiction. *See, e.g., Hawley v. Murphy*, 736 A.2d 268, 272 (Me. 1999) (denying full faith and credit to Connecticut order imposing a lien on real property in Maine); *Routh v. State, ex rel. Wyoming Workers' Compensation Div.*, 952 P.2d 1108, 1114-15 (Wyo. 1998) (holding that Wyoming courts, not Mississippi courts, had subject-matter jurisdiction over claims under the Wyoming Worker's Compensation Act); *Mack v. Mack*, 618 A.2d 744, 750 (Md. 1993) (holding that Maryland courts, not Florida courts, had subject-matter jurisdiction over child in Maryland); *Tennessee ex rel. Sizemore v. Surety Bank*, 200 F.3d 373, 380-81 (5th Cir.

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[5] *Kalb* was technically not a full faith and credit case: it involved a collateral challenge to a Wisconsin judgment lodged in a Wisconsin state court. But the Court's holding, that under *federal* law the judgment was subject to collateral attack, would have applied to a collateral challenge brought in any state.

2000) (refusing to grant full faith and credit to a Tennessee chancery court order that applied outside of Tennessee's territorial borders). These decisions are consistent with the ordinary understanding of subject-matter jurisdiction as regulating the power of a court to resolve a dispute.

Here, by contrast, it is undisputed that the Georgia Superior Court was the right forum to grant Georgia adoptions. Thus, the decision below appears to be unique—prior to the Alabama Supreme Court's decision, V.L. has been unable to identify a single successful collateral attack based on subject-matter jurisdiction from a federal appellate or state supreme court that did not challenge the forum in which a judgment was rendered.

The Alabama Supreme Court's decision is also a stark departure from how courts have applied the obligation of Full Faith and Credit to adoptions. Courts uniformly hold that adoptions, like any other judgments, are entitled to full faith and credit regardless of whether they would have been authorized under the law of the forum state. *See, e.g., In re Trust Created by Nixon*, 763 N.W.2d 404, 408-09 (Neb. 2009) (granting full faith and credit to adoption from sister state that would have violated local law); *Delaney v. First Nat. Bank in Albuquerque*, 386 P.2d 711, 714 (N.M. 1963) (same). Decisions invalidating out-of-state adoptions are extremely rare, and typically involve a finding that a parent was not notified of the proceeding, thereby raising due process concerns. *E.g., Hersey v. Hersey*, 171 N.E. 815, 819 (Mass. 1930). V.L. has not identified any court applying a rule remotely similar to

the Alabama Supreme Court's rule broadly authorizing collateral attacks on adoptions *whenever* the issuing court allegedly failed to strictly comply with a statutory provision.

In the context of adoptions involving same-sex couples, no prior court (other than courts reversed on appeal) has denied full faith and credit to an adoption from another jurisdiction. *See, e.g., Russell v. Bridgens*, 647 N.W.2d 56, 60 (Neb. 2002) (in factually similar case, reversing decision denying full faith and credit to Pennsylvania adoption because there was insufficient evidence in the record that the Pennsylvania court lacked jurisdiction);[6] *Henry v. Himes*, 14 F Supp. 3d 1036, 1057-58 n.24 (S.D. Ohio 2014) (holding that out-of-state same-sex adoption was entitled to full faith and credit); *Embry v. Ryan*, 11 So. 3d 408 (Fla. 2d DCA 2009) (same) *Giancaspro v. Congleton*, No. 283267, 2009 WL 416301 (Mich. Ct. App. Feb. 19, 2009) (same); *Palazzolo v. Mire*, 10 So. 3d 748, 755 (La. Ct. App. 2009) (same).

The unprecedented nature of the Alabama Supreme Court's decision warrants this Court's review. The Full Faith and Credit Clause elevates comity principles to a constitutional requirement, and states have historically honored that requirement, granting full faith and credit even to decrees with which they disagreed. The

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[6] Shortly after the Nebraska Supreme Court's opinion, the Pennsylvania Supreme Court held that Pennsylvania courts do have jurisdiction to this type of adoption. *In re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002).

Alabama Supreme Court circumvented that constitutional obligation by adopting a new understanding of "jurisdiction" that is completely unheard of in the long history of Full Faith and Clause jurisdiction. The stark departure of the decision below from historical Full Faith and Credit case law fully justifies granting certiorari.

B. The Decision Below Will Harm Alabama Families.

Finally, the severe practical consequences of the decision below on Alabama families justify this Court's review.

The Alabama Supreme Court's decision yields the ultimate conflict of authority: directly conflicting court orders in two different states. The Georgia Superior Court's adoption order has never been overturned by any Georgia court and remains binding on Georgia officials,[7] so in Georgia, V.L. is the children's legally-recognized adoptive mother. Yet in Alabama, as a result of the decision below, V.L. is a legal stranger to her children. Moreover, V.L. is not the only parent in this situation: All Georgia orders that allowed an unmarried second parent to adopt without terminating the existing parent's rights are now void in Alabama, and so all such families are simultaneously recognized

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[7] It is unlikely that the Georgia Superior Court would be required to give full faith and credit to an Alabama order invalidating the Superior Court's own judgment *See Colby v. Colby*, 369 P.2d 1019, 1022 (Nev. 1962) (refusing to give full faith and credit to Maryland decision invalidating Nevada judgment).

in Georgia and not recognized in Alabama.

This interstate inconsistency creates practical difficulties for families in this situation—consider the difficulties that a Georgia adoptive mother who works in Alabama will experience while filling out her taxes, or traveling with her child between states. Moreover, it also creates the risk of forum-shopping in child custody disputes. For instance, if an unmarried Georgia couple who obtained an adoption breaks up, the biological parent could avoid the effect of the adoption order by moving to Alabama and obtaining a declaration that the adoption is void. The risk of dueling parentage decrees and associated inter-state friction justifies this Court's review. *Cf. Webb v. Webb*, 451 U.S. 493, 494 (1981) (granting certiorari to resolve Full Faith and Credit issue because "because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child").[8]

Even setting aside these practical difficulties, the Alabama Supreme Court's decision will have a devastating effect on Alabama families who obtained similar adoptions in Georgia. Adoptive parents in this situation may not be eligible to register their children for school, to make medical decisions for their children, or to make innumerable decisions that parents take for granted. Worse, if the biological parent unexpectedly

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[8] The Court ultimately dismissed the writ because the Full Faith and Credit issue had not been litigated in the lower courts, 451 U.S. at 501-02. That consideration does not apply here, as that issue was litigated and decided below.

dies, the adoptive parent may not be able to take custody of her children—because the adoptive parent is now a legal stranger to her children in Alabama, the children will become legal orphans and wards of her state. If the adoptive parent dies, the child may not have the right to inherit, receive child's Social Security survivor benefits or worker's compensation benefits, or bring an action for wrongful death.

The Alabama Supreme Court's decision would warrant this Court's review even if it applied only to same-sex couples and others who obtained similar adoptions in Georgia. But it applies far more broadly than that. First, as explained above, the Court's reasoning was not specific to adoptions by an unmarried second parent; it establishes that *any* Georgia adoption that deviates from statutory requirements can be collaterally attacked in Alabama.

Second, the court's decision is not limited to Georgia judgments. The court cited Georgia case law holding that adoption is purely a matter of statute and that adoption statutes should be strictly construed. App. 23a-24a (citing *In re Marks*, 684 S.E.2d 364, 367 (Ga. Ct. App. 2009)). But adoption is a purely statutory cause of action in all fifty states, and courts from other states routinely use language virtually identical to the language in *Marks* on which the Alabama Supreme Court relied. [9] The Alabama Supreme Court's

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[9] *See, e.g.*, *S.J.S. v. T.D.L.*, No. 2014-CA-01901, 2015 WL 5223511, at *1 (Ky. Ct. App. Sept. 4, 2015); *In re Adoption of B.Y.*, 356 P.3d 1215, 1223 (Utah 2015); *In re Adoption of K.L.M.*, No. 15AP-118, 2015 WL 4656633, at *2 (Ohio Ct. App. Aug. 6, 2015); *In re J.C.J.*,

reasoning would therefore apply in indistinguishable form to *any* statutory defect in *any* adoption in *any* state—a point that the dissent made, App. 35a, and that the majority conspicuously did not dispute.

Thus, under the Alabama Supreme Court's decision, if an adoptive parent lives in Alabama, *any* parent who regrets permitting a second parent to adopt her child, or even any parent whose parental rights were terminated in another state's adoption proceeding, could presumably attack an adoption in an Alabama circuit court. And if she can convince the circuit court that there was a deviation from statutory requirements—which, under the Alabama Supreme Court's decision, ranks as a "jurisdictional" defect—she could win. Permitting an adoption judgment to be collaterally attacked years after the fact is catastrophic for the children and parents affected.

The Alabama Supreme Court's decision will have a particularly adverse impact on same-sex couples. All fifty states have long recognized adoptions by married couples, as well as step-parent adoptions, in which a step-parent could adopt the child of his or her spouse. However, before marriage between same-sex couples became legal, such adoptions were unavailable to same-sex couples. Thus, in many states (including Georgia),

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349 P.3d 491, at *3 (Kan. Ct. App. 2015) (unpublished table decision); *In re Adoption of K.M.*, 31 N.E.3d 533, 538 (Ind. Ct. App. 2015); *In re B.J.C.*, 163 So. 3d 905, 909-10 (La. Ct. App. 2015); *In re Noelia M.*, 121 A.3d 1, 17 (Conn. Super. Ct. 2014); *Brown v. Harper*, 761 S.E.2d 779, 780 (S.C. App. Ct. 2014); *In re T.S.D.*, 419 S.W.3d 887, 892 (Mo. Ct. App. 2014).

the only way that same-sex couples could ensure their joint parental rights was by one member of the couple becoming a parent (either biologically or through adoption), and then the second parent adopting the child, with the existing parent preserving his or her parental rights. As a result, for *all* Georgia same-sex couples who adopted a child prior to *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Alabama Supreme Court's decision strips those couples of the legal bonds tying both parents to their children if those families cross the Alabama state line. Moreover, the decision affects same-sex couples who adopted children outside of Georgia as well, because the legal landscape in Georgia matches the legal landscape in numerous other states: trial courts have granted adoptions similar to that obtained by V.L., without any appellate authority expressly affirming the validity of such adoptions.[10] Thus, all families who obtained adoption judgments in those states may now have a parent whom Alabama courts may hold to be a legal stranger to her children in Alabama. In light of these serious consequences to family stability, the Court should grant review.

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[10] While such adoptions are granted to unmarried couples in the majority of states, only about ten states have expressly authorized such adoptions either by statute or case law. Thus, in most states, the state of the law is similar to Georgia: trial courts routinely grant them, but the state appellate courts have not ruled on their permissibility. *See generally* Leslie Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, Am. U.J. Gender, Social Pol. & Law 467, 471-72 (2012).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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November 16, 2015

APPENDIX

Appendix A

Supreme Court of Alabama.

Ex parte E.L.
(In re E.L.

v.

V.L.).

1140595. | Sept. 18, 2015.

Opinion

PER CURIAM.

This Court granted the petition filed by E.L. seeking certiorari review of the judgment entered by the Court of Civil Appeals affirming the judgment entered by the Jefferson Family Court insofar as that judgment recognized and gave effect to an adoption decree entered by the Superior Court of Fulton County, Georgia ("the Georgia court"), approving the adoption by V.L., E.L.'s former same-sex partner, of E.L.'s biological children, S.L., N.L., and H.L. (hereinafter referred to collectively as "the children"). We reverse and remand.

I.

E.L. and V.L. were involved in a relationship from approximately 1995 through 2011. During the course of that relationship, they maintained a residence in Hoover. In December 2002 E.L. gave birth to S.L.,

and in November 2004 E.L. gave birth to twins, N.L. and H.L. All births were achieved through the use of assisted-reproductive technology. It is undisputed that, following the births of the children, V.L. acted as a parent to them, and, consistent with that fact, the parties eventually made the joint decision to take legal action to formalize and to protect the parental role V.L. had undertaken. V.L. explained this decision as follows in an affidavit filed with the Jefferson Family Court after initiating this action:

> "We began researching second-parent and co-parent adoptions. We had heard through friends that Fulton County, Georgia, was receptive to same-sex parents seeking such. I could not find an attorney in Birmingham that had any knowledge of such or that was very helpful. In the fall of 2006 we met with an attorney in Atlanta, Georgia, to seek legal advice. We were informed that I needed to be a resident of the state of Georgia, specifically Fulton County, for at least six (6) months to petition for adoption in Fulton County. E.L. spoke with a friend from college ... that lives in Atlanta and her friend's mother owned a house in Alpharetta. We went to Atlanta and looked over the home and spent time with [E.L.'s] friend and her family, including [the friend's] mother. [The friend's] mother ... offered up her house for rent to us. [E.L.] and I both signed a lease for the Alpharetta residence on October 1, 2006. I submitted fingerprints to the FBI which were obtained in Alpharetta on January

> 25, 2007, also part of the adoption process. A background check request was submitted using the Alpharetta address. On March 26, 2007, a home study was done at the address in Georgia; per my attorney this was a requirement for petitioning for adoption. Our family of five (5) was all present."

E.L. does not dispute these basic facts; however, she states in her own affidavit filed with the Jefferson Family Court that, although the parties leased the Alpharetta house, they never spent more than approximately two nights in it, instead continuing to live at their Hoover residence and to work at their jobs in Alabama.

On April 10, 2007, V.L. filed in the Georgia court a petition to adopt the children. E.L. subsequently filed with the Georgia court a document labeled "parental consent to adoption" in which she stated that she consented to V.L.'s adopting the children and that, although she was not relinquishing or surrendering her own parental rights, she desired that the requested adoption would "have the legal result that [V.L.] and [the children] will also have a legal parent-child relationship with legal rights and responsibilities equal to mine through establishment of their legal relationship by adoption." On May 30, 2007, the Georgia court entered its final decree of adoption ("the Georgia judgment") granting V.L.'s petition and declaring that "[V.L.] shall be permitted to adopt [the children] as her children." New birth certificates were subsequently issued for the children listing V.L. as a parent.

In approximately November 2011, E.L. and V.L. ended their relationship, and, in January 2012, V.L. moved out of the house E.L. and V.L. had previously shared. On October 31, 2013, V.L. filed a petition in the Jefferson Circuit Court alleging that E.L. had denied her access to the children and had interfered with her ability to exercise her traditional and constitutional parental rights. Accordingly, she asked the court to register the Georgia judgment, to declare her legal rights pursuant to the Georgia judgment, and to award her some measure of custody of or visitation with the children. The matter was transferred to the Jefferson Family Court, and E.L. subsequently moved that court to dismiss V.L.'s petition on multiple grounds. Both parties subsequently filed additional memoranda and the above-referenced affidavits regarding E.L.'s motion to dismiss.

On April 3, 2014, the Jefferson Family Court denied E.L.'s motion to dismiss, without a hearing, and simultaneously awarded V.L. scheduled visitation with the children. On April 15, 2014, the Jefferson Family Court entered an additional order noting that all other relief requested by the parties was denied and that the court considered the case closed. E.L. promptly moved the court to alter, amend, or vacate its judgment; however, on May 1, 2014, that motion was denied by operation of law, and, on May 12, 2014, E.L. filed her notice of appeal to the Court of Civil Appeals.[1]

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[1] Rule 1(B), Ala. R. Juv. P., provides that a postjudgment motion in a juvenile case is denied by operation of law if not ruled upon within 14 days of its filing unless specific steps outlined in the rule

Before the Court of Civil Appeals, E.L. argued (1) that the Jefferson Family Court lacked subject-matter jurisdiction to rule on V.L.'s petition; (2) that the Georgia court lacked subject-matter jurisdiction to enter the Georgia judgment; (3) that the Jefferson Family Court should have refused to recognize and to enforce the Georgia judgment for public-policy reasons; and (4) that the Jefferson Family Court denied her due process inasmuch as it awarded V.L. visitation rights without holding an evidentiary hearing at which E.L. could be heard. On February 27, 2015, the Court of Civil Appeals released its opinion rejecting the first three of these arguments, but holding that the Jefferson Family Court had erred by awarding V.L. visitation without conducting an evidentiary hearing. *E.L. v. V.L.*, [Ms. 2130683, Feb. 27, 2015] — So. 3d ——, —— (Ala. Civ. App. 2015). Accordingly, the judgment of the Jefferson Family Court was reversed and the case remanded for the Jefferson Family Court to conduct an evidentiary hearing before deciding the visitation issue; however, the implicit finding in the judgment of the Jefferson Family Court that the Georgia judgment was valid and subject to enforcement in Alabama was upheld. *See E.L. v. V.L.*, — So. 3d at —— ("At oral argument, the parties all agreed that, in its judgment, the family court impliedly enforced the Georgia judgment by recognizing V.L.'s right to visitation as an adoptive parent of the children.").

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are taken to extend that period. No attempt was made to extend the 14–day period in this case.

On March 11, 2015, E.L. petitioned this Court for a writ of certiorari to review the Court of Civil Appeals' affirmance of the judgment of the Jefferson Family Court to the extent that judgment recognized and enforced the Georgia judgment. On April 15, 2015, we granted E.L.'s petition seeking certiorari review and set the briefing schedule for the parties.[2]

II.

The issues raised by E.L. in this appeal regarding the effect and validity Alabama courts should afford the Georgia judgment are purely issues of law. Accordingly, we review those issues de novo. *Ex parte Byrom*, 47 So. 3d 791, 794 (Ala. 2010). We emphasize, however, that our review of those issues does not extend to a review of the legal merits of the Georgia judgment, because we are prohibited from making any inquiry into the merits of the Georgia judgment by Art. IV, § 1, of the United States Constitution ("the full faith and credit clause")[3] *Pirtek*

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[2] V.L. and E.L. subsequently filed briefs in support of their positions, as did the guardian ad litem appointed to represent the children, who filed a brief urging this Court to affirm the judgment of the Court of Civil Appeals. We also granted the subsequent motion filed by the American Academy of Adoption Attorneys, Inc., and the Georgia Council of Adoption Lawyers, Inc., requesting permission to file an amicus brief based on their interest in the subject matter of this appeal, and we have received their joint brief in support of V.L. urging us to affirm the judgment of the Court of Civil Appeals.

[3] Article IV, § 1, of the United States Constitution provides, in pertinent part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

USA, LLC v. Whitehead, 51 So. 3d 291, 296 (Ala. 2010). We further "note that '[t]he validity and effect of a foreign judgment, of course, are to be determined by the law of the state in which it was rendered.'" *Orix Fin. Servs., Inc. v. Murphy*, 9 So. 3d 1241, 1244 (Ala. 2008) (quoting *Morse v. Morse*, 394 So. 2d 950, 951 (Ala. 1981)).

III.

The gravamen of E.L.'s appeal is that the Jefferson Family Court erred by recognizing and enforcing the Georgia judgment. When considering such a claim—whether a foreign judgment should be enforced in this State—we are guided by the principle that we generally accord the judgment of another state the same respect and credit it would receive in the rendering state. This principle stems from the full faith and credit clause and was explained as follows by Chief Justice John Marshall in *Hampton v. McConnel*, 16 U.S. (3 Wheat.) 234, 235, 4 L. Ed. 378 (1818):

> "[T]he judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court in the United States."

The courts of this State have consistently applied the full faith and credit clause in this manner. *See, e.g.*, *Ohio Bureau of Credits, Inc. v. Steinberg*, 29 Ala. App. 515, 519, 199 So. 246, 249 (1940) (stating that "the duly attested record of the judgment of a State court is

entitled to such faith and credit in every court within the United States as by law or usage it had in the State from which it is taken"), and *Pirtek*, 51 So. 3d at 295 (stating that "'Alabama courts are generally required to give a judgment entitled to full faith and credit at least the res judicata effect accorded in the rendering court's jurisdiction'" (quoting *Menendez v. COLSA, Inc.*, 852 So. 2d 768, 771 (Ala. Civ. App. 2002))).

Traditionally, Alabama courts generally have applied the full faith and credit clause so as to limit their review of foreign judgments to whether the rendering court had jurisdiction to enter the judgment sought to be domesticated. This is likely because the question of a court's jurisdiction over the subject matter or parties is one of the few grounds upon which a judgment may be challenged after that judgment has become final and any available appellate remedies exhausted. *See, e.g., McDonald v. Lyle*, 270 Ala. 715, 718, 121 So. 2d 885, 887 (1960) ("Where it appears on the face of the record that a judgment is void, either from want of jurisdiction of the subject matter or of the defendant, it is the duty of the court, on application by a party having rights and interests immediately involved, to vacate the judgment or decree at any time subsequent to its rendition." (citing *Sweeney v. Tritsch*, 151 Ala. 242, 44 So. 184 (1907), and *Griffin v. Proctor*, 244 Ala. 537, 14 So. 2d 116 (1943))).[4]

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[4] Of course, in certain circumstances the lack of personal jurisdiction may be waived; however subject-matter jurisdiction may never be waived. *Campbell v. Taylor*, 159 So. 3d 4, 11 (Ala. 2014).

In this case, E.L. relies on this principle and argues that this Court should hold that the Georgia judgment is unenforceable in Alabama because, she argues, the Georgia court lacked subject-matter jurisdiction to issue the Georgia judgment based on the facts (1) that Georgia law does not provide for so-called "second parent adoptions"[5] and (2) that V.L. was not, E.L. alleges, a bona fide resident of Georgia at the time of the adoption. However, E.L. argues in the alternative that, even if we conclude that the Georgia court was not lacking subject-matter jurisdiction when it issued the Georgia judgment, we should not enforce the Georgia judgment because, E.L. argues, doing so would be contrary to Alabama's public policy.

In response, V.L. argues (1) that the Georgia court had subject-matter jurisdiction to issue the Georgia judgment even if Georgia law does not provide for second-parent adoptions or even if V.L. was not a bona fide resident of Georgia at the time of the adoption;[6] (2) that the Georgia judgment should be enforced even if

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[5] "A 'second parent' adoption apparently is an adoption of a child having only one living parent, in which that parent retains all of her parental rights and consents to some other person—often her spouse, partner, or friend—adopting the child as a 'second parent.' *See Butler v. Adoption Media, LLC*, 486 F. Supp. 2d 1022, 1044 (N.D. Cal. 2007) (describing 'second parent' adoption under California law)." *Bates v. Bates*, 317 Ga. App. 339, 340 n.1, 730 S.E.2d 482, 483 n.1 (2012). The *Bates* court further noted that "[t]he idea that Georgia law permits a 'second parent' adoption is a doubtful one." 317 Ga. App. at 341, 730 S.E. 2d at 484.

[6] V.L. does not concede that Georgia law does not allow second-parent adoptions or that she failed to comply with the residence requirements of the Georgia adoption statutes.

the Georgia court lacked subject-matter jurisdiction because, V.L. argues, Georgia Code Ann., § 19–8–18(e), bars *any* challenge to adoption decrees filed more than six months after the decree is entered; and (3) there is no public-policy exception to the full faith and credit clause.

Georgia Code Ann., § 9–11–60, sets forth the circumstances in which a Georgia court will not enforce one of its judgments, stating, in relevant part:

> "(d) *Motion to set aside.* A motion to set aside may be brought to set aside a judgment based upon:
>
> > "(1) Lack of jurisdiction over the person or the subject matter;
> >
> > "(2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or
> >
> > "(3) A nonamendable defect which appears upon the face of the record or pleadings. Under this paragraph, it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.
>
> "....
>
> "(f) *Procedure; time of relief.* Reasonable notice shall be afforded the parties on all motions. Motions to set aside judgments may be served by any means by which an original

> complaint may be legally served if it cannot be legally served as any other motion. A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time. Motions for new trial must be brought within the time prescribed by law. In all other instances, all motions to set aside judgments shall be brought within three years from entry of the judgment complained of."

Because the current legal proceedings were initiated over six years after the Georgia judgment was entered, the only ground in § 9–11–60 upon which a Georgia court might possibly decide not to enforce the Georgia judgment is that set forth in subsection (d)(1)—lack of jurisdiction over the person or the subject matter.[7] It is undisputed in this case that E.L. and V.L. willingly appeared with the children before the Georgia court, so personal jurisdiction is not disputed; thus, lack of subject-matter jurisdiction is the only *possible* ground a Georgia court could have for not enforcing the Georgia judgment.

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[7] Although E.L. suggests that V.L. committed a fraud upon the court by claiming to be a Georgia resident when she was not, such a claim would entitle her to relief from the Georgia judgment only to the extent that it implicates the subject-matter jurisdiction of the Georgia court. Section 9–11–60(d)(2) provides that a judgment may be set aside for fraud only if the party seeking to set aside the judgment is free from fault, and subsection (f) provides that a judgment may be challenged on the basis of fraud only within three years of its entry. E.L. was a willing participant in any fraud, and it is undisputed that no challenge was made to the Georgia judgment for more than six years after it was entered.

However, V.L. argues that a Georgia court would enforce the Georgia judgment *even if* there is a lack of subject-matter jurisdiction because of the nature of the judgment—an adoption decree—and the fact that it was rendered over six years ago. In support of this argument, she cites § 19–8–18(e), Georgia Code Ann., which provides that "[a] decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to *any* judicial challenge filed more than six months after the date of entry of such decree." (Emphasis added.) In *Williams v. Williams*, 312 Ga. App. 47, 47–48, 717 S.E. 2d 553, 553–54 (2011), the Georgia Court of Appeals held that § 19–8–18(e) barred even a jurisdictional challenge to an adoption decree if that challenge was filed outside that six-month period, notwithstanding the general rule in § 9–11–60, Georgia Code Ann., that a judgment may be challenged on jurisdictional grounds at any time:

> "Notwithstanding OCGA [Official Code of Georgia Annotated] § 19–8–18(e)'s plain language, the trial court held that the Code section did not bar [the appellee's] challenge to the adoption decree, on the ground that the challenge was brought under OCGA § 9–11–60, which allows for a judgment void for lack of jurisdiction to be attacked 'at any time' through a motion to set aside. OCGA § 9–11–60(f). *See generally Burch v. Dines*, 267 Ga. App. 459, 461(2), 600 S.E. 2d 374 (2004) (invalidity of service can give rise to lack of personal jurisdiction). But for purposes of statutory interpretation, 'a specific statute will prevail

> over a general statute, absent any indication of a contrary legislative intent, to resolve any inconsistency between them.' (Citation and punctuation omitted.) *Marshall v. Speedee Cash of Ga.*, 292 Ga. App. 790, 791, 665 S.E. 2d 888 (2008). In this case, OCGA § 19–8–18(e) is the more specific statute because it addresses when a particular type of judgment—an adoption decree—may be attacked, while OCGA § 9–11–60(f) addresses when judgments in general may be attacked. Neither statute contains language indicating a legislative intent that a motion to set aside under OCGA § 9–11–60 for lack of jurisdiction is an exception to the specific prohibition in OCGA § 19–8–18(e) against 'any judicial challenge' to an adoption decree."

The Georgia Court of Appeals subsequently explained the rationale underpinning § 19–8–18(e) in *Bates v. Bates*, 317 Ga. App. 339, 339–40, 730 S.E. 2d 482, 483 (2012), stating:

> "Under Georgia law, a judgment entered by a court without jurisdiction is void, *Carpenter v. Carpenter*, 276 Ga. 746, 747(1), 583 S.E. 2d 852 (2003), and generally speaking, such a judgment 'may be attacked in any court, by any person, at any time.' *James v. Intown Ventures*, 290 Ga. 813, 816(2) n.5, 725 S.E. 2d 213 (2012). *See also Cabrel v. Lum*, 289 Ga. 233, 235(1), 710 S.E. 2d 810 (2011) ('[A] judgment void for lack of personal or subject-matter jurisdiction may be attacked at any time.'). But in some

> circumstances, these principles must yield to competing principles that derive from the compelling public interest in the finality and certainty of judgments, *see Abushmais v. Erby*, 282 Ga. 619, 622(3), 652 S.E. 2d 549 (2007), an interest that is especially compelling with respect to judgments affecting familial relations. *See Amerson v. Vandiver*, 285 Ga. 49, 50, 673 S.E. 2d 850 (2009)."

See also Abushmais v. Erby, 282 Ga. 619, 622, 652 S.E. 2d 549, 552 (2007) (explaining that parties may not "confer subject-matter jurisdiction on a court by agreement or waive the defense [of a lack of subject-matter jurisdiction] by failing to raise it in the trial court" but that, "[u]nder limited circumstances, the equitable defenses of laches and estoppel may prevent a party from complaining of a court's lack of subject-matter jurisdiction"). It is evident from these decisions of the Supreme Court of Georgia and the Georgia Court of Appeals that a Georgia court will generally not entertain a challenge to a Georgia adoption decree based even on an alleged lack of subject-matter jurisdiction if that challenge is made more than six months after the challenged decree is entered.

E.L. nevertheless argues that § 19–8–18(e) does not apply in this case because, she argues, the statute by its terms applies only to adoption decrees issued pursuant to § 19–8–18(b), which provides:

> "If the court is satisfied that each living parent or guardian of the child has surrendered or had terminated all his rights to the child in the

> manner provided by law prior to the filing of the petition for adoption or that each petitioner has satisfied his burden of proof under Code Section 19–8–10, that such petitioner is capable of assuming responsibility for the care, supervision, training, and education of the child, that the child is suitable for adoption in a private family home, and that the adoption requested is for the best interest of the child, it shall enter a decree of adoption, terminating all the rights of each parent and guardian to the child, granting the permanent custody of the child to each petitioner, naming the child as prayed for in the petition, and declaring the child to be the adopted child of each petitioner. In all cases wherein Code Section 19–8–10 is relied upon by any petitioner as a basis for the termination of parental rights, the court shall include in the decree of adoption appropriate findings of fact and conclusions of law relating to the applicability of Code Section 19–8–10."

E.L. argues that the Georgia court failed to comply strictly with all the requirements of § 19–8–18(b) in this case inasmuch as the Georgia judgment failed to "terminat[e] all the rights of each parent and guardian to the child[ren]." In other words, E.L. argues that the Georgia judgment was not issued pursuant to § 19–8–18(b)—and thus is not subject to the bar of § 19–8–18(e)—because it did not terminate her own parental rights. Both the guardian ad litem and the amici curiae argue in their briefs that, regardless of the failure of the Georgia court to terminate E.L.'s parental

rights in the Georgia judgment, the Georgia judgment was nonetheless issued pursuant to § 19–8–18(b) because *all* decrees of adoption in Georgia are issued pursuant to § 19–8–18(b)—there is, they argue, no other statute under which a Georgia adoption decree can issue.

The Supreme Court of Georgia as a whole has not specifically addressed this issue; however, in *Wheeler v. Wheeler*, 281 Ga. 838, 642 S.E. 2d 103 (2007), a similar case involving a biological mother's attempt to void a second-parent adoption granted her same-sex ex-partner, that court, without issuing an opinion, denied a petition for the writ of certiorari filed by the biological mother challenging the Georgia Court of Appeals' decision not to consider her discretionary appeal of the trial court's order denying her petition to void the adoption. However, in a dissenting opinion Justice Carley addressed the argument E.L. now makes:

> "[The adoptive mother] argues that the motion to set aside is time-barred by OCGA [Official Code of Georgia Annotated] § 19–8–18(e), although the trial court did not rely on that statute. It reads as follows: 'A decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree.' OCGA § 19–8–18(e). Subsection (b) provides for the entry of a decree terminating all parental rights in those cases where the rights of each living parent or guardian have been surrendered or

> terminated, or where termination of parental rights is appropriate pursuant to OCGA § 19–8–10. As previously noted, however, subsection (b) obviously does not apply here, because neither surrender nor termination of [the biological mother's] rights was ever sought or accomplished, and the trial court entered a decree specifically preserving her rights. Because subsection (b) is inapplicable, the six-month limitation in subsection (e) clearly does not bar the motion to set aside."

281 Ga. at 841, 642 S.E. 2d at 105 (Carley, J., dissenting). We agree with the analysis of Justice Carley and his conclusion that the six-month bar in § 19–8–18(e) should not apply in the current situation. Having concluded that his is the proper analysis of § 19–8–18(b) and § 19–8–18(e), we can only assume that a Georgia court would make the same conclusion and, by extension, *would* permit a challenge on jurisdictional grounds to an adoption decree that did not fully comply with § 19–8–18(b).[8]

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[8] Although Justice Carley's analysis of § 19–8–18(b) and § 19–8–18(e) was offered in a special writing dissenting from the majority's decision not to grant certiorari review in *Wheeler*, the majority did not issue an opinion explaining its rationale for denying the petition for the writ of certiorari, and, accordingly, it cannot be presumed that the majority's decision was premised on a contrary analysis of § 19–8–18(b) and § 19–8–18(e). *See Wheeler*, 281 Ga. at 838–39, 642 S.E. 2d at 103 (Carley, J., dissenting) ("'With no explanation accompanying the majority's denial of the motion to dismiss, I am left to conjecture.'" (quoting *Perdue v. Baker*, 276 Ga. 822, 823–24, 586 S.E.2d 303, 304 (2003) (Benham, J., dissenting))).

We must therefore consider whether, in fact, E.L. has asserted an argument that actually puts the subject-matter jurisdiction of the Georgia court into question. She asserts that the Georgia court lacked subject-matter jurisdiction to issue the Georgia judgment for two reasons—because it purported to effect a second-parent adoption in which a living parent's parental rights were not terminated and because V.L. allegedly was not a bona fide Georgia resident at the time of the judgment; however, V.L. argues that these arguments in fact implicate only the merits of the Georgia judgment, and not the Georgia court's subject-matter jurisdiction, and the arguments are therefore, V.L. argues, barred by the full faith and credit clause, which "precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 85 L. Ed. 278 (1940). The Supreme Court of the United States explained this distinction between a subject-matter-jurisdiction challenge and a merit-based challenge in *Fauntleroy v. Lum*, 210 U.S. 230, 234–35, 28 S. Ct. 641, 52 L. Ed. 1039 (1908):

> "No doubt it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty, of the court. Under the common law it is the duty of a court of general jurisdiction not to enter a judgment upon a parol promise made without

> consideration; but it has power to do it, and, if it does, the judgment is unimpeachable, unless reversed. Yet a statute could be framed that would make the power, that is, the jurisdiction, of the court, dependent upon whether there was a consideration or not. Whether a given statute is intended simply to establish a rule of substantive law, and thus to define the duty of the court, or is meant to limit its power, is a question of construction and common sense. When it affects a court of general jurisdiction, and deals with a matter upon which that court must pass, we naturally are slow to read ambiguous words as meaning to leave the judgment open to dispute, or as intended to do more than to fix the rule by which the court should decide."

In this case, it is undisputed that Georgia superior courts like the Georgia court have subject-matter jurisdiction over, that is, the power to rule on, adoption petitions. Indeed, Georgia Code Ann., § 19–8–2, subtitled "jurisdiction and venue," provides:

> "(a) The superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption, except such jurisdiction as may be granted to the juvenile courts."

E.L., however, argues that the Georgia court could properly exercise subject-matter jurisdiction only when the requirements of the Georgia adoption statutes are met, and, in this case, they were not, she argues, because those statutes make no provision for a non-spouse to adopt a child without first terminating

the parental rights of the current parents. E.L.'s argument regarding the Georgia adoption statutes appears to be correct, as illustrated by Justice Carley's explanation of those statutes in his dissenting opinion in *Wheeler:*

> "Under certain conditions, a child who has only one living parent 'may be adopted by the spouse of that parent....' OCGA [Official Code of Georgia Annotated] § 19–8–6(a)(2). *See also In re C.N.W.*, [274 Ga. 765, 768, 560 S.E. 2d 1, 1 (2002)]. However, [the same-sex ex-partner] is not the spouse of [the biological mother], as '[m]arriages between persons of the same sex are prohibited in this state.' OCGA § 19–3–3.1(a). *See also* Ga. Const. of 1983, Art. I, § IV, Par. I(a) (approved in 2004); *In the Interest of Angel Lace M.*, [184 Wis. 2d 492, 507, 516 N.W 2d 678, 682 (1994)]. Under OCGA §§ 19–8–5(a) and 19–8–7(a), a third party who is not a stepparent, such as [the same-sex ex-partner], may adopt the child only if the parent's rights are surrendered, or are terminated pursuant to OCGA § 19–8–10. However, neither the surrender nor termination of [the biological mother's] parental rights was ever sought or ordered. Instead, the adoption petition was based on [the biological mother's] consent to the adoption, wherein she expressly refused to relinquish or surrender her parental rights, and the trial court declared that the child would have 'two legal parents' and awarded permanent custody to both. OCGA

> § 19–8–19(a)(1) specifically proscribes such an order: 'Except with respect to a spouse of the petitioner and relatives of the spouse, a decree of adoption terminates all legal relationships between the adopted individual and his relatives, including his parent....' 'If the legislature had intended to sanction adoptions by nonmarital partners, it would not have mandated this "cut-off" of ["all legal relationships"] of the birth parents in these adoptions.' *In the Interest of Angel Lace M.*, supra at 683."[9]

281 Ga. at 840, 642 S.E. 2d at 104. *See also Bates*, 317 Ga. App. at 341, 730 S.E. 2d at 484 ("The idea that Georgia law permits a 'second parent' adoption is a doubtful one ... and the arguments that [the appellant] presses about the validity of a decree that purports to recognize such an adoption might well have some merit."). We further note that our own Court of Civil Appeals considered this issue when this case was before it and concluded that "[its] independent review of the Georgia Adoption Code fully supports Justice Carley's position." *E.L. v. V.L.*, — So. 3d at ——.

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[9] We note that V.L. has not argued in this case that she was the spouse of E.L. and thus entitled to adopt the children on that basis. To the contrary, she asserts in her brief to this Court that

> "this case has nothing to do with marriage. V.L. is not a stepparent and was permitted to adopt as an unmarried person. Recognizing V.L.'s adoption and treating her like any other adoptive parent does not involve or require recognizing the parties' marriage in any way; as a legal matter, the two are completely unrelated."

V.L.'s brief, at p. 7.

Having now conducted our own analysis of the Georgia adoption statutes, we echo the conclusion of Justice Carley and the Court of Civil Appeals that Georgia law makes no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents. It is undisputed that a termination of E.L.'s parental rights did not occur in this case; thus, it would appear to be undisputed that the Georgia court erred by entering the Georgia judgment by which V.L. became an adoptive parent of the children. Our inquiry does not end here, however, as that error is ultimately of no effect unless it implicates the subject-matter jurisdiction of the Georgia court. While not conceding that the Georgia court erred, V.L. argues that any such error has no bearing on whether the Georgia court had subject-matter jurisdiction to issue the Georgia judgment, stating:

> "The question of whether the Georgia court properly interpreted and applied Georgia's adoption statutes to grant an adoption to V.L. without terminating E.L.'s rights as a parent is not a question of subject-matter jurisdiction, but rather of whether the adoption as pled was a cognizable action under Georgia law. 'The legal question of the cognizability of an alleged cause of action under state law goes to the merits of a lawsuit asserting that cause of action rather than the subject-matter jurisdiction of the court to decide the legal question.' *South Alabama Gas District v. Knight*, 138 So. 3d 971, 979 (Ala. 2013) (Murdock, J., concurring in the rationale in part

> and concurring in the result); *see also Ex parte BAC Home Loans Servicing, LP*, 159 So. 3d 31, 46 (Ala. 2013) ("'Lack of statutory authorization best supports analysis as the lack of a claim upon which relief can be granted ... not a claim over which the forum court lacks subject-matter jurisdiction....' ') (quoting Jerome A. Hoffman, *The Malignant Mystique of 'Standing'*, 73 Ala. Law. 360, 362 (2012)). Therefore, if the Georgia court had subject-matter jurisdiction over the adoption, which it did, E.L. is prohibited from challenging the judgment on any grounds, including arguing that Georgia does not allow anyone other than a spouse to adopt without terminating the rights of the existing parent."

V.L.'s brief, at pp. 24–25. The Court of Civil Appeals in fact agreed with this argument, stating in its opinion:

> "Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court. *See Pirtek [USA, LLC v. Whitehead]*, 51 So. 3d [291,] 296 [(Ala. 2010)] (holding that court in making inquiry into jurisdiction of foreign court to enter judgment cannot consider merits or correctness of foreign judgment)."

E.L. v. V.L., — So. 3d at ——.

However, we disagree. "The requirements of Georgia's adoptions statutes are mandatory and must

be strictly construed in favor of the natural parents...." *In re Marks*, 300 Ga. App. 239, 243, 684 S.E. 2d 364, 367 (2009). *See also Doby v. Carroll*, 274 Ala. 273, 274, 147 So. 2d 803, 804 (1962) ("In Alabama, the right of adoption is purely statutory and in derogation of the common law, ... and unless the statute by express provision or necessary implication confers the right to adoption, such right does not exist."). Although § 19–8–2(a) of the Georgia Code gives superior courts such as the Georgia court exclusive jurisdiction to enter adoption decrees, Georgia Code Ann., § 19–8–5(a), further defines the condition that must exist before such superior courts can grant adoptions to third parties such as V.L.—"each such living parent ... has voluntarily and in writing surrendered all of his rights to the child to that third person for the purpose of enabling that third person to adopt the child." As explained *supra*, it is undisputed that E.L. did not surrender her parental rights in this case; accordingly, the Georgia court was not empowered to enter the Georgia judgment declaring V.L. to be an adoptive parent of the children. That is to say, the Georgia court lacked subject-matter jurisdiction to enter the Georgia judgment. The Georgia judgment is accordingly void, and the full faith and credit clause does not require the courts of Alabama to recognize that judgment. Indeed, it would be error for the courts of this State to do so, and, to the extent the judgments of the Jefferson Family Court and Court of Civil Appeals did give effect to the Georgia judgment, they did so in error.[10]

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[10] Because we have held that the Georgia judgment is void for

IV

We granted the petition for a writ of certiorari filed by E.L. to review the judgment entered by the Court of Civil Appeals insofar as that judgment affirmed the Jefferson Family Court's judgment recognizing as valid the Georgia judgment approving the adoption by V.L. of the children of her former same-sex partner E.L. After reviewing the record and analyzing the relevant law of both this State and Georgia, we now conclude that the Court of Civil Appeals and the Jefferson Family Court erred in giving full faith and credit to the Georgia judgment because the Georgia court was without subject-matter jurisdiction to issue the Georgia judgment. Accordingly, the judgment of the Court of Civil Appeals is reversed and the cause remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

MOORE, CJ., and STUART, BOLIN, MAIN, and WISE, JJ., concur.

PARKER, J., concurs specially.

MURDOCK, J., concurs in the result.

SHAW, J., dissents.

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lack of subject-matter jurisdiction based on the fact that the Georgia adoption statutes make no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents, we need not consider E.L.'s other arguments that the Georgia judgment is also void because V.L. was not a bona fide resident of Georgia or that the courts of this State need not recognize that judgment because, E.L. alleges, it is contrary to the public policy of Alabama.

PARKER, Justice (concurring specially).

It is well settled in Alabama that adoption is a purely statutory right. "In Alabama, the right of adoption is purely statutory and in derogation of the common law, ... and unless the statute by express provision or necessary implication confers the right of adoption, such right does not exist." *Evans v. Rosser*, 280 Ala. 163, 164–65, 190 So. 2d 716, 717 (1966) (citing *Doby v. Carroll*, 274 Ala. 273, 147 So. 2d 803 (1962)). In *Hanks v. Hanks*, 281 Ala. 92, 99, 199 So. 2d 169, 176 (1967), this Court similarly stated:

> "The right of adoption, that is, to confer on the child of another a title to the privileges and rights of a child and appointment as heir of the adopting person is purely statutory, and was never recognized by the rules of common law. *Abney v. DeLoach, Admr.*, 84 Ala. 393, 4 So. 757 [(1888)]; *Franklin v. White*, 263 Ala. 223, 82 So. 2d 247 [(1955)]; *Milton v. Summers*, 280 Ala. 106, 190 So. 2d 540 [(1966)]."

Alabama has unequivocally held that adoption is a purely statutory right; an Alabamian's right to adopt does not exist apart from Alabama's positive law. Thus, adoption is a privilege, not a right.[11]

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[11] In Alabama, we have consistently referred to the statutory "right of adoption." It must be stressed that adoption is a *statutory* right, not a natural or fundamental right:

> "While adoption has often been referred to in the context of a 'right' of adoption, the right to adopt is not absolute, and ... such 'right' is not a natural or fundamental one but rather a right created by statute. Furthermore, adoption

Stating explicitly what is implicit in the above caselaw: there is no fundamental right to adopt. Instead, as set forth above, "adoption is a status created by the state acting as *parens patriae*, the sovereign parent."[12] *Douglas v. Harrelson*, 454 So. 2d 984, 986 (Ala. Civ. App. 1984) (citing *Ex parte Bronstein*, 434 So. 2d 780 (Ala. 1983)). Of course, having created the purely statutory right of adoption, the State has the authority to specify the contours of that right,[13] which it has done in the Alabama

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> statutes confer a privilege rather than a right; that is, adoption is not a right, but a privilege which is governed not by the wishes of the prospective parents but by the state's determination that a child is best served by a particular disposition. Similarly stated, adoption is not a fundamental right but is rather a creature of statute. Adoption has sometimes been characterized as a 'status' created by the state, and an 'opportunity,' rather than a right, to adopt has been said to be a legislatively created device."

2 Am. Jur. 2d *Adoption* § 6 (2004)(footnotes omitted).

[12] Of course, the State may act as *parens patriae* only as to children who actually need rescuing. In my special concurrence to *Ex parte E.R.G.*, 73 So. 3d 634 (Ala. 2011), I stated that a parent has a fundamental right to parent his or her children that is disturbed only ""'in those extreme instances where the state takes over to rescue the child from parental neglect or to save its life.'"" 73 So. 3d at 655 (quoting *R.J.D. v. Vaughan Clinic, P.C.*, 572 So. 2d 1225, 1228 (Ala. 1990), quoting in turn 59 Am. Jur. 2d *Parent and Child* § 48 at 194 (1987)). Only once a child has been determined to be "dependent" does the State have any jurisdiction to intrude into the "separate and legitimate human government" that is the family. 73 So. 3d at 650.

[13] *See Stevenson v. King*, 243 Ala. 551, 553, 10 So. 2d 825, 826 (1942) (recognizing that the purely statutory right of mortgage

Adoption Code, Ala. Code 1975, § 26–10A–1 *et seq.* In *Ex parte Sullivan*, 407 So. 2d 559, 562–63 (Ala. 1981), this Court stated:

> "Adoption is purely statutory. It was unknown to the common law. The courts of this state have always required strict adherence to statutory requirements in adoption proceedings. No case has stated this principle better than the Court of Civil Appeals in *Davis v. Turner*, 337 So. 2d 355 (Ala. Civ. App. 1976), where it said:
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> > "'Adoption is strictly statutory, *Hanks v. Hanks*, 281 Ala. 92, 199 So. 2d 169 [(1967)]. Being unknown at common law, it cannot be achieved by contract, *Prince v. Prince*, 194 Ala. 455, 69 So. 906 [(1915)]. Adoption is not merely an arrangement between the natural and adoptive parents, but is a status created by the state acting as *parens patriae*, the sovereign parent. Because the exercise of sovereign power involved in adoption curtails the fundamental parental rights of the natural parent, the adoption statutes must be closely adhered to.'
>
> "337 So. 2d at 360–361."

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redemption, which did not exist at common law but was created by the positive law of Alabama, "must be exercised by the person and in the mode and manner prescribed by the statute" and that "[i]t [is] entirely within the competency of the Legislature to determine the conditions upon which the right could be granted").

Among other things, the State, acting as *parens patriae*, has the authority to determine who may adopt based on the best interest of the child to be adopted. To this end, the United States Court of Appeals for the Eleventh Circuit has held that a state has a legitimate interest in encouraging a stable and nurturing environment for an adopted child by encouraging that the child be raised in the optimal family structure with both a father and a mother:

> "Florida clearly has a legitimate interest in encouraging a stable and nurturing environment for the education and socialization of its adopted children. *See, e.g., Palmore v. Sidoti*, 466 U.S. 429, 433, 104 S. Ct. 1879, 1882, 80 L. Ed. 2d 421 (1984) ('The State, of course, has a duty of the highest order to protect the interests of minor children, particularly those of tender years.'); *Stanley [v. Illinois]*, 405 U.S. [645,] 652, 92 S. Ct. [1208,] 1213 [31 L. Ed. 2d 551 (1972)] (noting that 'protect[ing] the moral, emotional, mental, and physical welfare of the minor' is a 'legitimate interest[], well within the power of the State to implement') (internal quotation marks omitted). It is chiefly from parental figures that children learn about the world and their place in it, and the formative influence of parents extends well beyond the years spent under their roof, shaping their children's psychology, character, and personality for years to come. In time, children grow up to become full members of society, which they in turn influence, whether for good or ill. The adage that 'the hand that rocks the

cradle rules the world' hardly overstates the ripple effect that parents have on the public good by virtue of their role in raising their children. It is hard to conceive an interest more legitimate and more paramount for the state than promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil society—particularly when those future citizens are displaced children for whom the state is standing *in loco parentis*.

"More importantly for present purposes, the state has a legitimate interest in encouraging this optimal family structure by seeking to place adoptive children in homes that have both a mother and father. Florida argues that its preference for adoptive marital families is based on the premise that the marital family structure is more stable than other household arrangements and that children benefit from the presence of both a father and mother in the home. Given that appellants have offered no competent evidence to the contrary, we find this premise to be one of those 'unprovable assumptions' that nevertheless can provide a legitimate basis for legislative action. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 62–63, 93 S. Ct. 2628, 2638, 37 L. Ed. 2d 446 (1973). Although social theorists from Plato to Simone de Beauvoir have proposed alternative child-rearing arrangements, none has proven as enduring as the marital family structure, nor has

> the accumulated wisdom of several millennia of human experience discovered a superior model. *See, e.g.*, Plato, *The Republic*, Bk. V, 459d–461e; Simone de Beauvoir, *The Second Sex* (H.M. Parshley trans., Vintage Books 1989) (1949). Against this 'sum of experience,' it is rational for Florida to conclude that it is in the best interests of adoptive children, many of whom come from troubled and unstable backgrounds, to be placed in a home anchored by both a father and a mother. *Paris Adult Theatre I*, 413 U.S. at 63, 93 S. Ct. at 2638."

Lofton v. Secretary of Dep't of Children & Family Servs., 358 F.3d 804, 819–20 (11th Cir. 2004).

In summary, adoption is a purely statutory right created by the State acting as *parens patriae;* there exists no fundamental right to adopt a child. Acting in the role of *parens patriae*, the State has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother.

SHAW, Justice (dissenting).

I dissent. The main opinion reviews the merits of the adoption in this case; our caselaw, interpreting the United States Constitution, does not permit this Court to do so.

The main opinion holds that the Superior Court of Fulton County, Georgia ("the Georgia court"), was not "empowered" to allow the adoption in this case—and thus lacked subject-matter jurisdiction—because it did not comply with Georgia Code Ann., § 19–8–5(a) and

§ 19–8–18(b). Section 19–8–5(a) designates that a child may be adopted by a "third party" if the rights of the living parents or guardians have been surrendered. Section 19–8–18(b) requires, among other things, that the court be "satisfied" that this has occurred. These provisions speak to the *merits* of whether the adoption should be granted—not to whether the trial court obtains subject-matter jurisdiction. Jurisdiction is instead provided by Georgia Code Ann., § 19–8–2(a), which states that the superior courts of Georgia have jurisdiction "in *all matters* of adoption." (Emphasis added.) This would include adoption matters where the petitioners fail to "satisfy" the court that the requisites for an adoption were met. The Supreme Court of Georgia has defined "subject-matter jurisdiction" as follows:

> "The phrase 'subject-matter jurisdiction,' as defined by this Court, '"refers to subject matter alone," i.e., "conferring jurisdiction in specified kinds of cases."' '"Jurisdiction of the subject matter does not mean simply jurisdiction of the particular case then occupying the attention of the court, but jurisdiction of the class of cases to which that particular case belongs."'"

Abushmais v. Erby, 282 Ga. 619, 620, 652 S.E.2d 549, 550 (2007) (citations omitted). The adoption petition in the instant case, whether meritorious or not, was part of the class of cases within the Georgia court's jurisdiction to decide. § 19–8–2(a). The fact that the adoption should not have been granted does not remove the case from the class of cases within that court's power.

I see no support for the proposition that, if a petitioner fails to show that an adoption is warranted or permissible under Georgia law, then the court in Georgia is suddenly divested of jurisdiction over the subject matter. Indeed, Georgia's adoption code seems to provide the opposite. Specifically, Georgia Code Ann., § 19–8–18(c), states: "If the court determines that any petitioner has not complied with this chapter, it *may* dismiss the petition for adoption without prejudice *or* it may continue the case." (Emphasis added.) Both §§ 19–8–5(a) and 19–8–18(b) are part of "this chapter," namely, chapter 8 of title 19 of the Official Code of Georgia. If a petitioner has failed to comply with anything in chapter 8, the result is not a loss of subject-matter jurisdiction, based on the simple fact that the court is still empowered *to continue the case.* Sections 19–8–5(a) and 19–8–18(b) cannot be read to deny the court subject-matter jurisdiction if it may nevertheless continue hearing the case despite noncompliance with those sections.[14]

When a party seeking to obtain an adoption fails to show that the adoption is permissible, then that party has simply failed to prove the merits of his or her case:

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[14] Under Georgia law, although the trial court may find that the requirements for an adoption were not met, it may nevertheless place custody of the child with the petitioners, an act antithetical to the idea that the court possesses no subject-matter jurisdiction. *In re Stroh*, 240 Ga. App. 835, 523 S.E. 2d 887 (1999) (affirming the trial court's denial of an adoption on the grounds that the petitioners were not residents of Georgia under Georgia Code Ann. § 19–8–3(a)(3), but nevertheless holding that the trial court erred in refusing to place custody of the child with the petitioners).

> "If in the end the facts do not support the plaintiffs, or the law does not do so, so be it-but this does not mean the plaintiffs cannot come into court and allege, and attempt to prove, otherwise. If they fail in this endeavor ... they have a 'cause of action' problem, or more precisely in these cases, a 'failure to prove one's cause of action' problem. The trial court has subject-matter jurisdiction to 'hear' such 'problems' -and the cases in which they arise."

Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 46 (Ala. 2013). Stated differently, "[t]he legal question of the cognizability of an alleged cause of action under state law goes to the merits of a lawsuit asserting that cause of action rather than the subject-matter jurisdiction of the court to decide that legal question." *South Alabama Gas Dist. v. Knight*, 138 So. 3d 971, 979 (Ala. 2013) (Murdock, J., concurring in the rationale in part and concurring in the result). In *BAC* and several other cases, e.g., *Poiroux v. Rich*, 150 So. 3d 1027 (Ala. 2014), and *Ex parte MERSCORP, Inc.*, 141 So. 3d 984 (Ala. 2013), this Court has rejected the idea that a simple failure to prove an element of a statutorily provided cause of action results in the lack of subject-matter jurisdiction. I have recently noted, however, that this Court "appears to [have] signal[ed] a retreat" from that principle. *McDaniel v. Ezell*, [Ms. 1130372, Jan. 30, 2015] — So. 3d ——, —— (Shaw, J., dissenting). Under the rationale of the main opinion, that retreat is now complete.

The rationale of Justice Carley's dissenting opinion in *Wheeler v. Wheeler*, 281 Ga. 838, 642 S.E. 2d 103

(2007), would hold that § 19–8–18(b) would not allow the type of adoption that occurred in the instant case. Thus, as the main opinion states, "the Georgia court *erred* by entering the Georgia judgment by which V.L. became an adoptive parent of the children." — So. 3d at —— (emphasis added). I tend to agree; however, this is an *error* on the *merits*, not an error that deprived the Georgia court of subject-matter jurisdiction. As the Court of Civil Appeals stated: "Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court." *E.L. v. V.L.*, [Ms. 2130683, Feb. 27, 2015] — So. 3d ——, —— (Ala. Civ. App. 2015). Our caselaw prohibits an inquiry into the merits of a foreign judgment. *Pirtek USA, LLC v. Whitehead*, 51 So. 3d 291, 296 (Ala. 2010) ("'Full faith and credit prohibits an inquiry into the merits of the original cause of action.'" (quoting *Tongue, Brooks & Co. v. Walser*, 410 So. 2d 89, 90 (Ala. Civ. App. 1982))). Further, I fear that this case creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction.

Appendix B

Court of Civil Appeals of Alabama.

E.L.

v.

V.L.

2130683. | Feb. 27, 2015.

On Application for Rehearing

PER CURIAM.

This court's opinion of October 24, 2014, is withdrawn, and the following is substituted therefor.

E.L. ("the mother") appeals from a judgment of the Jefferson Family Court ("the family court") awarding V.L., the mother's former same-sex partner, periodic visitation with the mother's biological children, S.L., N.L., and H.L. (hereinafter referred to collectively as "the children"). We reverse and remand.

Background

On October 31, 2013, V.L. filed a petition in the Jefferson Circuit Court ("the circuit court"). In that petition, V.L. asserted that she and the mother had engaged in a same-sex relationship from 1995 to 2011; that, during the course of their relationship, the mother had given birth to S.L. on December 13, 2002, and to twins, N.L. and H.L., on November 17, 2004, through the use of assisted reproductive technology; that, at all

times since the birth of the children, V.L., in addition to the mother, had acted as a parent to the children; that, on May 30, 2007, with the mother's consent, the Superior Court of Fulton County, Georgia ("the Georgia court"), had entered a judgment approving V.L.'s adoption of the children ("the Georgia judgment"), which judgment, V.L. asserted, was entitled to full faith and credit by the courts of this state; and that V.L. is listed as a parent on the children's Alabama birth certificates.

V.L. further asserted that the mother had denied her the traditional and constitutional parental rights to the children she had secured in the Georgia judgment, including visitation and access to their educational and other information. V.L. averred that the children have known both parties as their parents since their births and that the children were being harmed by the mother's denying them association with her. V.L. further averred that she was fit to assume the children's custody.

V.L. requested that the circuit court register the Georgia judgment; declare her legal status, rights, and relations to the children pursuant to the Georgia judgment; award her custody of the children or, alternatively, award her joint custody with the mother and establish a schedule of custodial periods; order the mother to pay her child support and attorney's fees; and provide her any such other relief to which she might be entitled.

On November 4, 2013, the circuit court transferred the matter to the family court. On December 17, 2013, the mother moved the family court to dismiss V.L.'s

petition, asserting, among other things, that the family court lacked subject-matter jurisdiction and that V.L. lacked standing to invoke the family court's jurisdiction.[1] On December 27, 2013, V.L. amended her petition to reassert the allegations in the original petition, but also to allege the dependency of the children based on their separation from her. On February 3, 2014, the mother filed a memorandum of law to support her motion to dismiss. That same date, V.L. filed a response to the motion to dismiss. On March 11, 2014, the mother "renewed" her motion to dismiss, attaching her affidavit. That same date, V.L. responded to the renewed motion to dismiss, attaching her affidavit and several exhibits.

On April 3, 2014, without a hearing, the family court denied the mother's motion to dismiss and awarded V.L. scheduled visitation with the children. On April 15, 2014, the family court entered a supplemental order specifically denying all other requested relief and closing the case. On April 17, 2014, the mother moved the family court to alter, amend, or vacate its judgment. On May 1, 2014, the mother's postjudgment motion was deemed denied by operation of law, and, on May 12, 2014, the mother timely filed her notice of appeal.[2] *See* Rule 1(B), Ala. R. Juv. P.; Rule 4(a), Ala.

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[1] On February 3, 2014, V.L. moved the family court to consolidate the underlying action with actions designated by case numbers "JU–55.01; JU–56.01; JU–57.01," which are referred to in the record as dependency actions. The record contains no indication that the family court acted on that motion.

[2] Although the mother moved the family court and this court to stay enforcement of the judgment pending resolution of her

R. App. P.; and *Holifield v. Lambert*, 112 So. 3d 489, 490 (Ala. Civ. App. 2012) ("[C]ases filed in the Jefferson Family Court and docketed with a case number having a 'CS' prefix[] are governed by the Alabama Rules of Juvenile Procedure.").

Analysis

Subject-Matter Jurisdiction of the Family Court

Before proceeding to consider the merits of the appeal, we must first consider whether the family court had subject-matter jurisdiction to enter its April 3, 2014, judgment. As stated above, the action was commenced in the circuit court, and that court, *sua sponte*, transferred the action to the family court. At oral argument, the parties all agreed that, in its judgment, the family court impliedly enforced the Georgia judgment by recognizing V.L.'s right to visitation as an adoptive parent of the children. The family court did not award V.L. visitation under any other theory, having expressly rejected any allegation of dependency or any other claim raised by V.L. in her pleadings. Thus, the preliminary question is whether the family court, when ruling on a child-custody matter, has subject-matter jurisdiction to enforce a foreign judgment.

Act No. 478, Ala. Acts 1935, §§ 2 & 3, established a juvenile and domestic-relations court for Jefferson

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postjudgment motion and appeal, those motions were denied. The mother subsequently petitioned our supreme court for mandamus relief from the denial of those motions; however, the mother filed a motion to dismiss that petition, which motion was granted by the supreme court. *See E.L. v. V.L.* (No. 1131084, Nov. 7, 2014).

County, which, by Act. No. 674, Ala. Acts 1967, was renamed the Family Court of Jefferson County. *See Placey v. Placey*, 51 So. 3d 374, 375 n.2 (Ala. Civ. App. 2010). Section 2 of Act No. 478 provides, in pertinent part, that the family court "shall have and exercise original and exclusive jurisdiction" over "[b]ills, petitions or writs involving the custody of minors." Section 3 of Act No. 478 provides that, as to such actions that are within its jurisdiction, the family court is invested with "all the power, jurisdiction and authority of Circuit and Chancery Courts...."

The petition filed by V.L. seeking a determination of her custody rights to the children clearly fell within the general subject-matter jurisdiction of the family court. We further conclude that the family court had the specific jurisdiction to enforce the Georgia judgment. According to Ala. Code 1975, § 6–9–230 *et seq.*, the Uniform Enforcement of Foreign Judgments Act ("the UEFJA"), upon compliance with certain filing provisions, a judgment entered in a foreign jurisdiction that is entitled to full faith and credit may be enforced in this state by a circuit court. *See Nix v. Cassidy*, 899 So. 2d 998, 1002 (Ala. Civ. App. 2004) ("The circuit court had jurisdiction to accept the judgment creditor's filing of the Georgia judgment pursuant to § 6–9–232 [, Ala. Code 1975]...."). Because § 3 of Act No. 478 vests the family court with the same authority as circuit courts in relation to actions involving the custody of children, the family court possesses the same power as a circuit court to enforce a foreign judgment if necessary to dispose of a child-custody petition.

V.L. followed the procedure established under the UEFJA by filing an authenticated copy of the Georgia judgment with the clerk of the family court, *see* Ala. Code 1975, § 6–9–232, and by filing an affidavit setting forth the information required by Ala. Code 1975, § 6–9–233. Thus, V.L. properly invoked the subject-matter jurisdiction of the family court to enforce the Georgia judgment. V.L. did not have to further register the Georgia judgment pursuant to the provisions of the Alabama Uniform Child Custody Jurisdiction and Enforcement Act, Ala. Code 1975, § 30–3B–101 *et seq.*, because the Georgia judgment is not a "child custody determination" within the meaning of Ala. Code 1975, § 30–3B–102(3) (defining "child custody determination" as "[a] judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child"). *See also* Ala. Code 1975, § 30–3B–102(4) (defining "child custody proceeding" so as to exclude "a court proceeding involving ... adoption"). Thus, the family court could lawfully enforce the Georgia judgment as part of its adjudication of the custody petition filed by V.L.

Subject–Matter Jurisdiction of the Georgia Court

"A judgment [filed pursuant to the UEFJA] has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner...." § 6–9–232. "Therefore, once the judgment is domesticated, [a party attacking the validity or enforceability of the judgment] must resort to procedures applicable to any other judgment originally entered by a circuit court in

order to set it aside." *Greene v. Connelly*, 628 So. 2d 346, 350 (Ala. 1993), abrogated on other grounds, *Ex parte Full Circle Distrib., L.L.C.*, 883 So. 2d 638 (Ala. 2003). In this case, the mother argued in her renewed motion to dismiss that the Georgia judgment should be set aside because it is void for lack of subject-matter jurisdiction, a ground recognized by Rule 60(b)(4), Ala. R. Civ. P We, therefore, treat that portion of her motion to dismiss as a Rule 60(b)(4) motion, which is an appropriate mechanism to vacate a domesticated foreign judgment. *See Bartlett v. Unistar Leasing*, 931 So. 2d 717, 720 n. 2 (Ala. Civ. App. 2005).

"Before giving effect to a foreign judgment, Alabama courts are permitted to inquire into the jurisdiction of the foreign court rendering the judgment." *Feore v. Feore*, 627 So. 2d 411, 413 (Ala. Civ. App. 1993); *see also Pirtek USA, LLC v. Whitehead*, 51 So. 3d 291, 295 (Ala. 2010). Generally speaking, "[t]he scope of inquiry is limited to, '(1) whether the issue of jurisdiction was fully and fairly litigated by the foreign court and (2) whether the issue of jurisdiction was finally decided by the foreign court.'" *Feore*, 627 So. 2d at 413 (quoting *Alston Elec. Supply Co. v. Alabama Elec. Wholesalers, Inc.*, 586 So. 2d 10, 11 (Ala. Civ. App. 1991)). However, if the court entering the foreign judgment did not litigate and decide the question of its subject-matter jurisdiction, an Alabama court may make its own determination of subject-matter jurisdiction on a Rule 60(b)(4) motion. *See Lanier v. McMath Constr., Inc.*, 141 So. 3d 974 (Ala. 2013)." [T]here is a presumption that the court rendering the judgment had the jurisdiction to do so,

and the burden is placed on the party challenging the judgment to overcome the presumption." *McGouryk v. McGouryk*, 672 So. 2d 1300, 1302 (Ala. Civ. App. 1995).

In this case, the Georgia court rendered a three-page judgment in which it found that the mother had conceived the children via artificial insemination through an anonymous sperm donor. According to the judgment, V.L. acted as "an equal second parent to the children" after their births. The judgment recites that it would be in the best interests of the children, and consistent with the mother's and V.L.'s life-long parenting arrangement, to allow V.L. to adopt the children without terminating the parental rights of the mother. In that judgment, the Georgia court did not expressly address its subject-matter jurisdiction. From the affidavit filed by the mother in support of her renewed motion to dismiss, it is apparent that she fully supported V.L.'s petition and that she never contested the subject-matter jurisdiction of the Georgia court.[3] Because that issue was not fully and fairly litigated in

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[3] The mother's failure to contest subject-matter jurisdiction before the Georgia court does not prevent her from now challenging subject-matter jurisdiction in Alabama because subject-matter jurisdiction cannot be conferred by estoppel, *see Cedartown North P'ship, LLC v. Georgia Dep't of Transp.*, 296 Ga. App. 54, 56, 673 S.E. 2d 562, 565 (2009) ("It is well established that '[j]urisdiction of the subject matter of a suit cannot be conferred by agreement or consent, or be waived *or based on an estoppel of a party to deny that it exists.*'" (quoting *Redmond v. Walters*, 228 Ga. 417, 417, 186 S.E. 2d 93, 94 (1971))); *see also Vann v. Cook*, 989 So. 2d 556, 559 (Ala. Civ. App. 2008), and may be raised at any time. *Abushmais v. Erby*, 282 Ga. 619, 652 S.E.2d 549 (2007); and *Ex parte Ortiz*, 108 So. 3d 1046 (Ala. Civ. App. 2012).

the Georgia court, it can be considered anew on the motion of the mother.

Section 19–8–2(a), Ga. Code Ann., a part of the Georgia Adoption Code, Ga. Code Ann., § 19–8–1 *et seq.*, provides, in pertinent part, that "[t]he superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption ...." The Georgia court, as a superior court of Fulton County, had general subject-matter jurisdiction over adoptions. The Georgia Supreme Court has not yet construed the provisions of the Georgia Adoption Code to determine if it allows adoption by a same-sex partner who has assumed a *de facto* parental role. In *Wheeler v. Wheeler*, 281 Ga. 838, 642 S.E. 2d 103 (2007) (Carley, J., dissenting), Justice Carley asserted that Georgia law does not authorize a court to approve an adoption by a person who is not a stepparent or a spouse of the biological parent unless the parents of the child surrender their parental rights or their parental rights are involuntarily terminated. In *Bates v. Bates*, 317 Ga. App. 339, 730 S.E. 2d 482 (2012), the Georgia Court of Appeals recognized that it is "doubtful" that Georgia law permits such "second parent" adoptions[4] and that arguments against the validity of an adoption decree approving such an

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[4] "A 'second parent' adoption apparently is an adoption of a child having only one living parent, in which that parent retains all of [his or] her parental rights and consents to some other person—often [his or] her spouse, partner, or friend—adopting the child as a 'second parent.' *See Butler v. Adoption Media, LLC*, 486 F.Supp. 2d 1022, 1044 ... (N.D. Cal. 2007) (describing 'second parent' adoption under California law)." *Bates*, 317 Ga. App. at 340 n.1, 730 S.E. 2d at 483 n.1.

adoption "might well have some merit." 317 Ga. App. at 342, 730 S.E. 2d at 484. Our independent review of the Georgia Adoption Code fully supports Justice Carley's position. Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a "second parent," that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court. *See Pirtek*, 51 So. 3d at 296 (holding that court in making inquiry into jurisdiction of foreign court to enter judgment cannot consider merits or correctness of foreign judgment).

The mother contends that she and V.L. did not properly invoke the jurisdiction of the Georgia court because they did not reside in Georgia as required by Georgia law. *See* Ga. Code Ann., § 19–8–2(b) ("All petitions under this chapter shall be filed in the county in which any petitioner resides."); and Ga. Code Ann., § 19–8–3(a)(3) ("Any adult person may petition to adopt a child if the person ... [h]as been a bona fide resident of this state for at least six months immediately preceding the filing of the petition."). We note, however, that the Georgia court specifically found in the Georgia judgment that V.L. and the mother had met the residency requirements. Arguably, because the Georgia court has already decided that the residency requirements were satisfied, the family court was bound by that determination and could not find otherwise. *See Feore, supra.* Even if it was not bound by the Georgia judgment, the family court did not err in failing to inquire into the mother's claim that she and V.L. had defrauded the Georgia court as to their

residency. Georgia Code Ann., § 19–8–18(e), provides: "A decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree." That provision effectively precludes the mother from attacking the Georgia judgment on the ground of lack of residency. *See Williams v. Williams*, 312 Ga. App. 47, 717 S.E.2d 553 (2011).

In summary, we conclude that the Georgia court had subject-matter jurisdiction to enter the Georgia judgment and that the family court did not err in denying the mother's Rule 60(b)(4) motion.

Full Faith and Credit

The UEFJA defines a "foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Ala. Code 1975, § 6–9–231. Article IV, § 1, of the United States Constitution provides that "[f]ull Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." In interpreting the Full Faith and Credit Clause, the United States Supreme Court has held that "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). Because the Georgia court had appropriate jurisdiction, the Georgia judgment is entitled to full

faith and credit throughout the United States, including Alabama.

Under the federal Constitution, each state is entitled to develop its own statutes embodying its own public policy, but the United States Supreme Court has declared that there is "no roving 'public policy exception' to the full faith and credit due *judgments*." *Baker*, 522 U.S. at 233, 118 S. Ct. 657. Hence, a court may not refuse to enforce a foreign judgment on the ground that it violates the public policy of the forum state. *Id.* Thus, even if the law of Alabama generally disallows adoption by same-sex partners, *see In re Adoption of K.R.S.*, 109 So. 3d 176 (Ala. Civ. App. 2013), under the Full Faith and Credit Clause, a court of this state must still enforce a duly entered foreign judgment approving the adoption petition of a same-sex partner. *See, e.g., Embry v. Ryan*, 11 So. 3d 408 (Fla. Dist. Ct. App. 2009). We reject any contention by the mother that the family court should have refused to enforce the Georgia judgment based on Alabama public policy.

Due Process

Although we agree with V.L. that the family court did not err in recognizing V.L. as a second parent of the children pursuant to the Georgia judgment, we hold that the family court did err in awarding V.L. visitation without affording the mother a hearing. Courts of equity have broad power to act for the best interests of children, but that power must be exercised consistently with the due-process rights of both parents. *Thorne v. Thorne*, 344 So. 2d 165, 169 (Ala. Civ. App. 1977). Before visitation rights may be adjudicated, each

parent is entitled to due notice and an opportunity to be heard on the matter. *Ex parte Dean*, 137 So. 3d 341, 345 (Ala. Civ. App. 2013). Moreover, in a contested case, a court should award visitation only after ascertaining through an evidentiary hearing that visitation would be in the best interests of the children. *See id.* Accordingly, the family court erred in awarding V.L. visitation based simply on her status as an adoptive parent under the Georgia judgment without conducting an evidentiary hearing to inquire into the best interests of the children.

Based on that error, we reverse the judgment of the family court and remand the case. On remand the family court is to forthwith conduct an evidentiary hearing to decide the visitation issue.

The mother's request for the award of attorney's fees on appeal is denied.

APPLICATION GRANTED; OPINION OF OCTOBER 24, 2014, WITHDRAWN; OPINION SUBSTITUTED; REVERSED AND REMANDED WITH INSTRUCTIONS.

All the judges concur.

No. 15-648

Supreme Court, U.S.
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In The

Supreme Court of the United States

V. L., PETITIONER

v.

E. L. AND TOBIE J. SMITH,
GUARDIAN AD LITEM

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

RESPONSE OF TOBIE J. SMITH, GUARDIAN AD LITEM, IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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DECEMBER 11, 2015

QUESTION PRESENTED

Does the Full Faith and Credit Clause permit a court to deny recognition to an adoption judgment previously issued by a court from a sister State, based on the forum court's *de novo* determination that the issuing court erred in applying its own State's adoption law?

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BRIEF FOR TOBIE J. SMITH, GUARDIAN AD LITEM, IN SUPPORT OF GRANTING THE PETITION

Respondent Tobie J. Smith, the duly appointed Guardian Ad Litem for the three minor children in this case, respectfully submits this brief in support of granting the petition.[1]

INTRODUCTION

This case involves a question of federal law that is of exceptional importance to families that have been bound together through a second-parent adoption: whether their second-parent adoption judgment will be given full faith and credit throughout the Nation. A second-parent adoption is an adoption in which a person adopts his or her unmarried partner's child without terminating the first parent's parental rights. Families across the Nation have obtained such adoption judgments and have relied on the legal stability that those court orders have provided their families. The decision of the Supreme Court of Alabama dramatically undermines that stability, declaring null and void adoptions issued years earlier by another State's courts. As the dissenting Justice explained, the decision "creates a dangerous precedent that calls into question the finality of adoptions in Alabama." Pet. App. 35a.

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[1] Within 20 days after this case was placed on the docket, counsel of record for all parties received notice of Mr. Smith's intent to file this brief. *See* S. Ct. R. 12.6.

In this case, three children—S. L., N. L., and H. L., who range in age from eleven to thirteen—are caught up in a custody dispute between their parents, V. L. and E. L. V. L. and E. L. are two women who were in a committed relationship for nearly seventeen years. E. L. gave birth to all three children, but both E. L. and V. L. are their parents, both having fully participated in caring for and rearing the children since birth.

In 2007, with E. L.'s participation and full consent, the Superior Court of Fulton County, Georgia, granted V. L.'s petition to adopt the children as a second parent, finding that the adoption was in the children's best interests. Under that judgment, V. L. should have full parental rights. Indeed, in Georgia she still does, as there is no question that Georgia courts would give effect to V. L.'s adoption judgment. Under the Full Faith and Credit Clause, it was therefore mandatory for the Alabama courts to do the same.

The Supreme Court of Alabama, however, refused to honor the Georgia court's judgment, concluding that the Georgia court lacked subject-matter jurisdiction. The Alabama court recognized that the Georgia court had "subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." Pet. App. 19a. Nevertheless, the Alabama court conducted its "own analysis of the Georgia adoption statutes" and ruled that those statutes do not provide for second-parent adoptions. Pet. App. 22a. From that, the Alabama court held that the Georgia Superior Court

lacked subject-matter jurisdiction to issue the adoption judgment.

But, as the dissenting Justice explained, those Georgia statutes "speak to the *merits* of whether the adoption should be granted—not to whether the trial court obtains subject-matter jurisdiction." Pet. App. 32a. Under the Alabama court's decision, "[a]ny irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." Pet. App. 35a. The Alabama decision thus calls into question the validity of all manner of out-of-state adoptions.

The issue has grave importance, both in this case and beyond. The decision creates an intolerable situation for families who obtained second-parent adoptions in other States and who have counted on those judgments' being given full faith and credit in States such as Alabama. The Alabama Supreme Court's decision effectively declares for S. L., N. L., and H. L. that the woman whom they have known since birth as their mother, and who adopted them with the full consent of their biological mother, is actually a stranger to them. The Alabama court so ruled even though the biological mother, E. L., has never so much as suggested—not even in the trial court, where such arguments would have been properly presented—that V. L. is unfit or that preserving the children's legal relationship with V. L. is not in their best interests. Other families are also at risk of having their foundational relationships declared void if they move or travel into Alabama.

These unbearable circumstances are antithetical to the Constitution's guarantee of full faith and credit. This Court's review is urgently needed.

STATEMENT

A. Factual Background

V. L. and E. L. were in a committed relationship for nearly seventeen years, beginning in 1995. Pet. App. 1a. In 2002 and 2004, E. L. gave birth to three children conceived through assisted-reproductive technology. Pet. App. 1a-2a. From the beginning of the children's lives, V. L. and E. L. both have been their parents.

In 2007, E. L. and V. L. decided to formalize V. L.'s parental role and obtain legal protection for her as a parent. Pet. App. 2a-3a. To that end, with E. L.'s consent, V. L. petitioned the Superior Court of Fulton County, Georgia, for a judgment of adoption. Pet. App. 3a. The court noted that E. L. consented to the adoption and desired that the requested adoption would "have the legal result that [V. L.] and [the children] will also have a legal parent-child relationship with legal rights and responsibilities equal to mine through establishment of their legal relationship by adoption." Pet. App. 3a.

After a home visit, Pet. App. 2a-3a, the Georgia court found by "clear and convincing evidence that [V. L.] has functioned as an equal second parent to the children, since their birth," and that "[t]he children relate to both their legal mother and [V. L.] as

parents on an equal basis." Pet. App. 49a. The court found that the "adoption is in the best interests of the children. It would be inconsistent with the reality of this parenting arrangement to either terminate the rights of the sole legal parent or to deny the adoption by the second parent, which is with the express consent of the legal parent." Pet. App. 50a.

The court thus granted the adoption, concluding that the "evidence is clear and convincing that the adoption is in the children's best interest." *Ibid.* The court explained that the "children should have the legal benefits and protections of both their parents which will accrue as a result of their adoption." *Ibid.*

Specifically addressing the fact that this was a second-parent adoption, the court determined that it could issue the adoption judgment even without terminating E. L.'s parental rights. The court explained that it "would be contrary to the children's best interest and would adversely impact their right to care, support and inheritance and would adversely affect their sense of security and well-being to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother." *Ibid.* The court thus ordered "that the parent-child relationship between the legal mother, [E. L.], and the children is hereby preserved intact and that [V. L.] shall be recognized as the second parent." Pet. App. 51a.

New birth certificates were issued, listing V. L. as a parent. Pet. App. 3a.

The relationship between E. L. and V. L. ended in November 2011. Pet. App. 4a.

B. Proceedings In The Alabama Courts

1. Jefferson Family Court

In 2013, V. L. sought to secure her parental rights after E. L. interfered with V. L.'s exercise of those rights and denied access to the children. *Ibid.* V. L. filed a petition in Alabama seeking registration of the Georgia judgment of adoption, a declaration of her legal rights pursuant to that judgment, and an award of joint custody and/or visitation. *Ibid.* The Jefferson Family Court awarded V. L. scheduled visitation. *Ibid.*

2. Alabama Court of Civil Appeals

E. L. appealed to the Alabama Court of Civil Appeals. That court initially reversed the Family Court's order, but it later granted rehearing, reversed itself, and held that the Georgia adoption is entitled to full faith and credit. Pet. App. 4a-5a. The court concluded that, based on its "independent review of the Georgia Adoption Code," Georgia law does not permit second-parent adoptions. Pet. App. 45a. But it nevertheless held that the adoption judgment must be recognized in Alabama: "Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court." *Ibid.*

3. Supreme Court of Alabama

The Supreme Court of Alabama reversed, refusing to accord full faith and credit to the Georgia adoption decree. The court acknowledged that its review of the legal issues in the case "does not extend to a review of the legal merits of the Georgia judgment, because we are prohibited from making any inquiry into the merits of the Georgia judgment by Art. IV, § 1, of the United States Constitution," *i.e.*, the Full Faith and Credit Clause. Pet. App. 6a. Nevertheless, the court proceeded to review the merits of the Georgia adoption judgment, under the guise of reviewing the Georgia court's subject-matter jurisdiction to issue the judgment—even while expressly acknowledging that the Georgia court had "subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." Pet. App. 19a.

The Alabama court *de novo* conducted its "own analysis of the Georgia adoption statutes" and decided that the Georgia court should not have granted V. L.'s adoption petition because, in its view, Georgia law does not provide "for a non-spouse to adopt a child without first terminating the parental rights of the current parents." Pet. App. 22a. Having determined that the Georgia court misapplied Georgia law, the Alabama court concluded that the error went to the Georgia court's subject-matter jurisdiction. Pet. App. 23a-24a. The Alabama court cited a decision from the intermediate appellate court in Georgia stating that the "requirements of Georgia's adoption

statutes are mandatory and must be strictly construed in favor of the natural parents." *Ibid.* (quoting *In re Marks*, 684 S.E.2d 364, 367 (Ga. Ct. App. 2009)). From that single statement, the Alabama court concluded that a defect in application of the Georgia adoption statutes in a particular case necessarily means that the Georgia court was "not empowered" to issue an adoption decree in that case. Pet. App. 24a.

The Alabama court also rejected application of Georgia's statute of repose for adoptions, under which Georgia courts will enforce a Georgia adoption judgment even if there was no subject-matter jurisdiction to issue it. Pet. App. 12a. The statute of repose provides that "[a] decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree." Ga. Code Ann. § 19-8-18(e). The Alabama court acknowledged that Georgia courts have held that after six months, the statute of repose precludes even jurisdictional challenges to adoptions. Pet. App. 12a (citing *Williams v. Williams*, 717 S.E.2d 553, 553-54 (Ga. Ct. App. 2011)). The policy underlying the statute of repose is that normal jurisdictional principles "'must yield to competing principles that derive from the compelling public interest in the finality and certainty of judgments, an interest that is especially compelling with respect to judgments affecting familial relations.'" Pet. App. 13a-14a (quoting *Bates v. Bates*, 730 S.E.2d 482, 483 (Ga. Ct. App. 2012) (citation omitted)). But, relying on its own analysis of the

Georgia statutes and a dissent from the denial of a certiorari petition to the Supreme Court of Georgia in a case in which the lower court refused to set aside an adoption decree, the Alabama Supreme Court ruled that the statute of repose applies only where the statutory requirements are already met. Pet. App. 15a-17a.

The Supreme Court of Alabama therefore declared that the "Georgia judgment is accordingly void, and the full faith and credit clause does not require the courts of Alabama to recognize that judgment." Pet. App. 24a.

Justice Parker specially concurred. Pet. App. 26a-31a. He wrote that under *Alabama* law, adoption "is a privilege," that "there is no fundamental right to adopt," and that "having created the purely statutory right of adoption, the State has the authority to specify the contours of that right." Pet. App. 26a-27a. In his view, because "adoption is a purely statutory right created by the State acting as *parens patriae*," Alabama "has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother." Pet. App. 31a.

Justice Shaw dissented. Pet. App. 31a-35a. He wrote that the statutory requirements to which the majority pointed "speak to the *merits* of whether the adoption should be granted—not to whether the trial court obtains subject-matter jurisdiction." Pet. App. 32a. He explained that "[j]urisdiction is instead provided by Georgia Code Ann., § 19-8-2(a), which

states that the superior courts of Georgia have jurisdiction 'in *all matters* of adoption.'" *Ibid.* (emphasis by Justice Shaw). Moreover, the Supreme Court of Georgia has defined "subject-matter jurisdiction" as jurisdiction over the "class of cases" to which any particular case belongs. *Ibid.* (quoting *Abushmais v. Erby*, 652 S.E.2d 549, 550 (Ga. 2007)). In Justice Shaw's view, "[t]he adoption petition in the instant case, whether meritorious or not, was part of the class of cases within the Georgia court's jurisdiction to decide." *Ibid.* Finally, Justice Shaw expressed his "fear that this case creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." Pet. App. 35a.

REASONS THE PETITION SHOULD BE GRANTED

A. The Alabama Supreme Court's Decision Subjects Families To Conflicting State-Court Judgments Concerning Their Legal Relationships

The issue presented in this case is of enormous importance and is worthy of this Court's review. The decision of the Supreme Court of Alabama leaves adoptive parents and children in a state of considerable uncertainty, eviscerating the stability of out-of-state adoption judgments that the Full Faith and

Credit Clause is supposed to guarantee. In disregarding what this Court has taught about the meaning and importance of full faith and credit, the Alabama court's decision leaves children in the lurch, unsettling the most foundational relationships in their lives.

"[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-18 (1984). "Family relationships" are foremost among those demanding protection, because they, "by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." *Id.* at 619-20. The Constitution, therefore, guarantees family relationships "a substantial measure of sanctuary from unjustified interference by the State." *Id.* at 618.

The Alabama Supreme Court's decision upends one of the most important familial relationships, that between mother and child. Although S. L., N. L., and H. L. have known V. L. as their mother since birth, and although that relationship was granted formal legal protection by the state of Georgia (and, indeed, even though each child's birth certificate lists V. L. as a parent), the State of Alabama now declares that the children's adoptive mother is not and never was more than a legal stranger to them. The risk of harm to these children, as well as to others who may find

themselves in this position for reasons having nothing to do with their best interests, is intolerable.

What is more, the Alabama court's refusal to recognize final Georgia second-parent adoption judgments means that the parents and children in this case are subject to conflicting judgments by different state courts. V. L.'s adoption decree has never been challenged in Georgia, nor could it be, as explained below. It thus remains valid there, notwithstanding the Alabama court's decision. Consequently, whether a legal relationship exists between V. L. and her children depends on where the children are physically located at the time. While the children now have no legal relationship with V. L. in Alabama, if the children were to cross into the neighboring State of Georgia (or any other State, for that matter), V. L. will become the children's legal mother, notwithstanding the Alabama Supreme Court's ruling that V. L. is a stranger to the children. And V. L. would return to stranger status if the children returned to Alabama. The fact that these children are subject to conflicting state judgments about who their parents are warrants review from this Court. *See Webb v. Webb*, 451 U.S. 493, 494 (1981) (granting certiorari to resolve full-faith-and-credit issue "because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child").

The children in this case are far from alone in this state of extraordinary uncertainty. As a result of the Alabama court's decision, children throughout

Alabama who were adopted by a second parent in Georgia are subject to the same rigid dichotomy. V. L. and E. L. are hardly alone in having obtained a second-parent adoption in a State, such as Georgia, in which the legal merits of such adoptions had not been conclusively established. Indeed, it has been well known for several years that some Georgia family courts would grant second-parent-adoption petitions. *See* Leslie M. Fenton & Ann Fenton, *The Changing Landscape of Second-Parent Adoptions*, ABA Section of Litigation (Oct. 25, 2011), http://bit.ly/1Qb8rD9 (listing Georgia as among the States in which "numerous trial courts have approved second-parent adoptions but no binding precedent exists"); *see also Bates*, 730 S.E.2d at 483 (discussing second-parent adoption granted in 2007 by the Superior Court of Fulton County, Georgia).[2]

The decision's reach is not even limited to families who reside in Alabama. Current Georgia residents who obtained second-parent adoptions there are also in danger of their family relationships' being

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[2] The Supreme Court of Georgia has not conclusively determined whether Georgia law provides for second-parent adoptions. Whether Georgia's adoption statutes expressly provide for second-parent adoptions is not necessarily determinative. In many States, the availability of second-parent adoptions has been recognized through court rulings rather than statute. *See* Fenton & Fenton, *supra*. For present purposes, all that matters is that the Georgia Superior Court had subject-matter jurisdiction to issue adoption decrees and granted V. L. an adoption judgment, and that Georgia courts would recognize and enforce that judgment.

legally null and void when they enter into Alabama. Moreover, the Alabama Supreme Court's rationale would extend to adoption judgments from other States in which second-parent adoptions have been openly granted without any clear statutory or precedential guidance providing for them. *See* Fenton & Fenton, *supra* (listing eleven such States, apart from Georgia).

And no principled distinction would limit the Alabama Supreme Court's rationale from extending to *any* state adoption decree that an Alabama court deems faulty. Indeed, *every* out-of-state adoption is at risk of being declared "void" by Alabama courts in a collateral attack, simply by a showing that a statutory requirement was not followed to a T, even years after the adoption was finalized.

This concern can arise in a multitude of different scenarios and is not limited to situations where, as here, the relationship between the biological parent and the adoptive parent ends. Under the Alabama Supreme Court's decision, a child who lives with a biological parent and an adoptive parent who are in an ongoing relationship would be treated as an orphan if the biological parent were to die or become incapacitated. Because the child's adoptive parent is a legal stranger to that child, the child could be removed from the custody of his or her only remaining parent at a critical time of grief and crisis, when the child most needs that parent. Similarly, while out-of-state families are visiting or traveling through Alabama, they are subject to the risk that if anything were to

happen to the biological parent, the adoptive parent would be legally powerless to help the children during the crisis or thereafter. The Alabama court's decision also may affect numerous other areas that should not be issues for adoptive parents and their children—including medical decision making, schooling, inheritance, and Social Security benefits.

This untenable risk of harm to families is more than enough to justify this Court's intervention.

B. The Alabama Supreme Court's Decision Cannot Be Reconciled With This Court's Full-Faith-And-Credit Jurisprudence

The Alabama Supreme Court's decision is completely unfaithful to this Court's precedents directing States to give full faith and credit to foreign judgments.

1. The Full Faith and Credit Clause permits only a narrow inquiry into the jurisdiction of the court that issued the judgment

The Constitution demands that "[f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." U.S. Const. art. IV, § 1; *see also* 28 U.S.C. § 1738. Under that clause, a judgment in one State's court commands the same preclusive effect in other States' courts that it would enjoy in the issuing State. *Underwriters Nat'l Assur. Co. v. N.C. Life & Acc. & Health Ins. Guar. Ass'n*, 455 U.S. 691, 702 (1982). That command "is exacting." *Baker ex rel. Thomas v.*

Gen. Motors Corp., 522 U.S. 222, 223 (1998). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Ibid.* The Constitution accordingly precludes courts in one State, presented with a judgment from another, from "any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Milliken v. Meyer*, 311 U.S. 457, 462 (1940).

In determining the appropriate recognition that an out-of-state judgment commands, courts may "inquire into the jurisdictional basis of the foreign court's decree." *Underwriters Nat'l Assur.*, 455 U.S. at 705. "[A] judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment." *Id.* at 704. But the "scope of review one court may conduct to determine whether a foreign court had jurisdiction to render a challenged judgment" is "limited." *Id.* at 706. The reviewing court is limited to determining the judgment's preclusive effect *in the rendering State*. *See id.* at 704 & n.10; *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (holding that full faith and credit "commands a federal court to accept the rules chosen by the State from which the judgment is taken," rather than "employ their own rules of res judicata" (quotation marks and citation omitted)). That means,

for example, state courts must give res judicata effect to another State's court's conclusion that it had jurisdiction over the parties and subject matter, where that issue was fully and fairly considered and finally decided in the court that issued the original judgment. *Underwriters Nat'l Assur.*, 455 U.S. at 706; *Durfee v. Duke*, 375 U.S. 106, 111 (1963).

2. *Rather than conduct a narrow jurisdictional review, the Alabama Supreme Court effectively conducted a full-fledged inquiry into the Georgia judgment's merits*

While the Alabama Supreme Court recited and claimed to apply the proper standard, it did so "in name only." *See Maryland v. Kulbicki*, 136 S. Ct. 2, 3 (2015) (per curiam). The Alabama court failed to properly limit its review of the Georgia court's judgment, as required by the Full Faith and Credit Clause, and instead conducted a *de novo* review of the merits of V. L.'s adoption petition in a collateral attack on the Georgia judgment.

A statute directed to jurisdiction is one that "goes to the power" of the court, whereas a statute directed to the merits goes "only to the duty of the court." *Fauntleroy v. Lum*, 210 U.S. 230, 235 (1908). Accordingly, the Alabama Supreme Court should have focused its inquiry on whether the Georgia Superior Court had the *power* to issue adoption judgments.

Had it done so, it could have concluded only that the Georgia Superior Court had subject-matter jurisdiction over the adoption proceeding. There is no question that Georgia superior courts have the *power* to issue adoption decrees. Superior courts are Georgia's trial-level courts of general jurisdiction. Ga. Const. art. VI, § 1, ¶ 1. Georgia law vests those courts with "exclusive jurisdiction in all matters of adoption." Ga. Code Ann. § 19-8-2. Indeed, the Alabama Supreme Court rightly recognized that "Georgia superior courts like the Georgia court have subject-matter jurisdiction over, that is, the *power* to rule on, adoption petitions." Pet. App. 19a (emphasis added).

That should have been the end of the question. As the Supreme Court of Georgia recently explained, "[t]he phrase jurisdiction of the subject matter refers to subject matter alone, i.e., conferring jurisdiction in specified *kinds of cases*. It is the power to deal with the *general abstract question*, to hear the particular facts in *any case* relating to this question." *Crutchfield v. Lawson*, 754 S.E.2d 50, 52 (Ga. 2014) (quotation marks and citations omitted) (emphasis added); *see also Abushmais*, 652 S.E.2d at 550 ("Jurisdiction of the subject matter does not mean simply jurisdiction of the particular case then occupying the attention of the court, but jurisdiction of the class of cases to which that particular case belongs." (quoting *Hopkins v. Hopkins*, 229 S.E.2d 751, 752 (Ga. 1976))).

Rather than properly confining its inquiry into the Georgia Court's power, the Alabama Supreme Court answered a different question: whether, when presented with a petition for a second-parent adoption, the Georgia Court had the *duty* under Georgia law to deny it. That is, under the guise of determining subject-matter jurisdiction, the Alabama court instead litigated the *merits* question whether Georgia law provides for second-parent adoptions. The court *de novo* conducted its "own analysis of the Georgia adoption statutes" and decided that those statutes do not provide "for a non-spouse to adopt a child without first terminating the parental rights of the current parents." Pet. App. 22a. If full faith and credit permitted such an inquiry into the statutory requirements for the original judgment, all manner of out-of-state judgments could be challenged in collateral attacks. *See Riley v. N.Y. Trust Co.*, 315 U.S. 343, 349 (1942) (Without full faith and credit, "adversaries could wage again their legal battles whenever they met in other jurisdictions. Each state could control its own courts but itself could not project the effect of its decisions beyond its own boundaries.").

Contrary to the Alabama Supreme Court's reasoning, when a Georgia superior court issues an order or judgment that does not comply with all statutory requirements, such defect goes to the merits, not to the court's subject-matter jurisdiction over the matter. For example, in *Mosley v. Lancaster*, the appellant contended that a Georgia superior court lacked subject-matter jurisdiction to deny probate of a will

without impaneling a jury, relying on a statute providing that "a jury must be empaneled" in cases "touching the probate of wills." 770 S.E.2d 873, 876 (Ga. 2015) (quoting Ga. Code Ann. § 15-6-8(4)(E)). Rejecting that argument, the Supreme Court of Georgia explained that the Georgia Constitution "establishes the superior courts as courts of general jurisdiction" and that a statute "grants superior courts jurisdiction to review the judgments of probate courts, including those touching on the probate of wills." *Id.* at 877 Notwithstanding that no jury was empaneled, the Georgia superior court still had subject-matter jurisdiction because it "had jurisdiction of the 'class of cases' to which this case belongs." *Ibid.* (quoting *Crutchfield*, 754 S.E.2d at 52); *see also Zeagler v. Zeagler*, 15 S.E.2d 478, 480 (Ga. 1941) ("the jurisdiction of a court in no way depends on the sufficiency or insufficiency of the pleadings").

Nor is there any indication in the statutory provisions that the Georgia legislature intended to abrogate the *power* of Georgia superior courts to issue adoption decrees whenever the statutory requirements are not met precisely. The text and structure of Section 19-8-18 strongly suggest the contrary. For one thing, the statute provides: "If the court determines that any petitioner has not complied with this chapter, it may dismiss the petition for adoption without prejudice *or it may continue the case*." Ga. Code Ann. § 19-8-18 (emphasis added). Authorizing a court to continue the case is the opposite of depriving the court of jurisdiction. In addition, the statute

contains other requirements for issuing adoption decrees that cannot be jurisdictional. For example, it provides that "[i]f the court is not satisfied that the adoption is in the best interests of the child, it shall deny the petition." *Ibid.* It would be passing strange to suggest that a court's subject-matter jurisdiction turns on whether it is "satisfied" that its decision is in a child's best interests. That is a quintessential merits question.

When the Alabama Supreme Court's decision does refer to Georgia law, it points to authorities discussing merits questions, not jurisdictional ones. The Alabama Supreme Court pointed to the principle under Georgia law that "[t]he requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents." Pet. App. 23a-24a (quoting *Marks*, 684 S.E.2d at 367). But that is a rule of interpretation of the merits of whether an adoption should be granted, *see Marks*, 684 S.E.2d at 367, not a rule about jurisdiction.

The court also quoted at length from an opinion by Justice Carley of the Supreme Court of Georgia, dissenting from denial of certiorari review in a case in which the lower Georgia court had refused to set aside a second-parent adoption. Pet. App. 20a-22a (quoting *Wheeler v. Wheeler*, 642 S.E.2d 103, 104 (Ga. 2007) (Carley, J., dissenting from denial of certiorari)). Justice Carley argued in dissent that Georgia statutes do not provide for adoption of a child who has a living parent unless that "parent's rights are surrendered, or are terminated." Pet. App. 20a. Such

an adoption, according to Justice Carley, was defective because the adoptive parent "did not have any valid claim for adoption." *Wheeler*, 642 S.E.2d at 104. The Alabama Supreme Court "echo[ed] the conclusion of Justice Carley * * * that Georgia law makes no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents." Pet. App. 22a. But, again, that is a conclusion about the *merits* of second-parent adoption in Georgia. *See Murphy v. Murphy*, 430 S.E.2d 749, 751 (Ga. 1993). Indeed, Justice Carley never said that his analysis was jurisdictional.

3. The Alabama Supreme Court should not have second-guessed the Georgia judgment because Georgia courts would enforce it

Likewise, the Alabama Supreme Court's decision gives short shrift to the preclusive effect Georgia courts would give V. L.'s adoption judgment. Georgia courts would give full effect to the adoption judgment, and the Alabama courts are bound to do so as well. *See Underwriters Nat'l Assur.*, 455 U.S. at 702.

First, by statute, Georgia explicitly prohibits any challenge—even a jurisdictional challenge—to the Georgia adoption here. Under Section 19-8-18(e) of the Georgia Code, "[a] decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to *any* judicial challenge filed more than six months after the date of entry of such decree." Ga. Code Ann. § 19-8-18(e) (emphasis added).

Georgia courts regularly enforce that prohibition, concluding that it proscribes collateral attacks on adoption judgments, even attacks on the issuing court's jurisdiction. *Williams*, 717 S.E.2d at 553-54; *see Rimmer v. Tinch*, 749 S.E.2d 236, 239 (Ga. Ct. App. 2013) (holding that § 19-8-18(e) barred consideration of whether adoption judgment was void); *Oni v. Oni*, 746 S.E.2d 641, 643 (Ga. Ct. App. 2013) (holding that "§ 19-8-18(e) brooks no exception" and barring a challenge based on fraud to an adoption decree brought ten months after its entry).

This adoption-specific statute of repose reflects Georgia's policy choice to effectuate "the compelling public interest in the finality and certainty of judgments, an interest that is especially compelling with respect to judgments affecting familial relations." *Bates*, 730 S.E.2d at 483 (citation omitted). Other States have made similar policy choices, based on the unique interest in finality of adoption decrees. *See, e.g.*, Ala. Code § 26-10A-25(d); *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ky. Ct. App. 2008); 2 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases* § 14:28, n.1, Westlaw (database updated Dec. 2015) (collecting statutes).

The Alabama Supreme Court interpreted this statute of repose to mean that Georgia "*would* permit a challenge on jurisdictional grounds to an adoption decree that did not fully comply with § 19-8-18(b)." Pet. App. 17a. The Alabama court ruled that if an adoption did not comply strictly with the requirements of Section 19-8-18(b), the adoption was not

issued "pursuant to subsection (b)," and therefore the statute of repose has no effect. Pet. App. 15a-17a. But Section 19-8-18(b) is the sole statutory provision for granting an adoption in Georgia. The Alabama Supreme Court's interpretation would therefore allow a complete end-run around the adoption-specific statute of repose: any adoption could be challenged at any time on the ground that it did not comply strictly with Section 19-8-18(b). That narrow reading wholly disregards the policy choices that the Georgia legislature made in enacting the provision, and it ignores the way that Georgia courts have applied the statute of repose. *See Bates*, 730 S.E.2d at 483. The Full Faith and Credit Clause allows States to make such choices and have them respected by other States. Moreover, the Alabama court's only authority for its conclusion was a dissenting opinion in a case in which the Georgia Supreme Court refused to review, and thus allowed to stand, a trial court judgment barring a collateral attack based on that same reasoning. Pet. App. 16a-17a (quoting *Wheeler*, 642 S.E.2d at 105 (Carley, J., dissenting)).

Second, Georgia courts would not have entertained E. L.'s challenge to the Georgia superior court's jurisdiction because of E. L.'s own actions in affirmatively seeking the adoption judgment and because of the delay in challenging the adoption.

Under Georgia law, because of the compelling need for finality and stability in family matters, a party such as E. L. who participated in prior litigation cannot later challenge the judgment, even if the

original court lacked jurisdiction to issue the decree. For example, in *Amerson v. Vandiver*, the Georgia Supreme Court held that where a party "affirmatively invoked the jurisdiction of the superior court for the purpose of obtaining a divorce, consented to that court's incorporation of the settlement agreement [terminating his parental rights], and then failed to file a motion to set aside for four years," the party could not challenge the superior court's jurisdiction to terminate his parental rights. 673 S.E.2d 850, 851 (Ga. 2009); *see also Bennett v. State*, 494 S.E.2d 330, 331 (Ga. 1998) (State could not collaterally attack new trial judgment where "State urged the trial court to grant a new trial," "thanked the trial court for its actions," and "did not appeal from the judgment" or otherwise seek review for five years).

Here, E. L., together with V. L., affirmatively invoked the jurisdiction of the Georgia Superior Court for the purpose of obtaining an adoption decree. Pet. App. 11a. E. L. filed her own "parental consent to adoption" stating that she consented to V. L.'s adopting the children and that she wanted the adoption to "have the legal result that [V. L.] and [the children] will also have a legal parent-child relationship with legal rights and responsibilities equal to mine." Pet. App. 3a. And she failed to challenge the jurisdiction of the Georgia court to issue that decree for more than six years. In these circumstances, Georgia law plainly prohibits E. L. from collaterally attacking the very judgment that she originally sought. *Amerson*, 673 S.E.2d at 851. The Full Faith and Credit Clause

demands that Alabama give the adoption judgment the same preclusive effect. *Underwriters Nat'l Assur.*, 455 U.S. at 702; *see Coe v. Coe*, 334 U.S. 378, 384 (1948) (where "both parties were given full opportunity to contest the jurisdictional issues" and the judgment is "not susceptible to collateral attack in the courts of the State in which it was rendered * * * the requirements of full faith and credit preclude the courts of a sister State from subjecting such a decree to collateral attack").

Third, the Alabama Supreme Court never should have considered whether the Georgia court could issue a second-parent adoption decree because the Georgia Superior Court already dealt with that very question. The Georgia court expressly considered the import of the fact that it was being asked simultaneously to preserve E. L.'s parental rights and also to grant parental rights to V. L. The court concluded that the adoption could proceed nonetheless. The Georgia court ordered that "the parent-child relationship between the legal mother, [E. L.], and the children *is hereby preserved intact* and that [V. L.] shall be recognized as the second parent." Pet. App. 51a (emphasis added). The court so ordered because it found that it "would be contrary to the children's best interest and would adversely impact their right to care, support and inheritance and would adversely affect their sense of security and well-being to either deny this adoption by the second parent *or to terminate the rights of the legal and biological mother.*" Pet. App. 50a (emphasis added). The court also

concluded that V. L. had "complied with all relevant and applicable formalities regarding the Petition for Adoption in accordance with the laws of the State of Georgia." *Ibid.*

The Georgia court's unchallenged decision that it could issue the adoption decree should have been the last word. Under well-established rules of finality, the Alabama courts were precluded from inquiring into the Georgia court's authority. *See Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939) ("The principles of res judicata apply to questions of jurisdiction as well as to other issues, as well to jurisdiction of the subject matter as of the parties." (quotation marks and footnote omitted)); *see also Coe*, 334 U.S. at 384.

C. This Case Is An Ideal Vehicle

Finally, no vehicle issues exist that might possibly preclude the Court from deciding the important question of federal law presented. The question concerning when a state court may deny recognition to a judgment issued by a sister State's court based on purported lack of subject-matter jurisdiction is starkly presented here. No issue exists with respect to the Georgia court's personal jurisdiction over the parties. As the Alabama Supreme Court recognized, "E.L. and V.L. willingly appeared with the children before the Georgia court, so personal jurisdiction is

not disputed." Pet. App. 11a. If the Alabama Supreme Court misapplied this Court's full-faith-and-credit precedents (it did), then V. L.'s adoption judgment must be recognized.

Accordingly, the Guardian Ad Litem urges the Court to grant the petition and restore a measure of familial stability for the children at issue here, as well for the untold numbers of other families potentially affected by the Alabama Supreme Court's decision.

CONCLUSION

For the reasons set forth above and in the petition for a writ of certiorari, the petition should be granted.

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In the Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for Writ of Certiorari to the Alabama Supreme Court

RESPONDENT E.L.'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

A "second parent" adoption is one granted to a third party without severing the rights of the child's living parent. V.L. and E.L. were an unmarried couple living in Alabama. A Georgia court granted V.L. a second parent adoption of E.L.'s three biological children, while leaving intact E.L.'s parental rights. Georgia law, however, provides that children may be adopted by a third party "only if [the children's] living parent ... has voluntarily and in writing surrendered all of his or her rights to such child[ren]." Ga. Code Ann. § 19-8-5(a).

When the couple subsequently split up, V.L. sought to enforce the Georgia adoption in Alabama under the federal Full Faith and Credit Clause. The Alabama Supreme Court ruled that the Georgia adoption was not entitled to full faith and credit because the Georgia court lacked authority—and hence, jurisdiction—to award a second parent adoption under Georgia law.

The questions presented are:

1. Does a state court owe full faith and credit to a sister state's "second parent" adoption, when the sister state's law expressly prohibits "second parent" adoptions?

2. Does a state court owe full faith and credit to a sister state's adoption, when the undisputed evidence shows that the adoptive parent went to the sister state solely for the purpose of obtaining the adoption?

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INTRODUCTION

This case concerns a "second parent" adoption, meaning an adoption granted to a member of an unmarried couple that simultaneously preserves the rights of the biological parent. Such unusual adoptions are not authorized by the laws of most states and, in Georgia, they are expressly prohibited by statute. Nonetheless, a Georgia court granted a second parent adoption to the petitioner, who at the time was living with the respondent in Alabama. When the couple subsequently split up, the petitioner sought to enforce the Georgia adoption in Alabama under the Full Faith and Credit Clause. The Alabama Supreme Court declined, applying the settled rule that a sister state judgment does not merit full faith and credit if the issuing court lacked the power to render it. *See, e.g.*, *Williams v. North Carolina*, 325 U.S. 226, 229 (1945) (a judgment merits full faith and credit "only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment").

The petition seeks review of the Alabama Supreme Court's decision, but it fails to clear the first hurdle of certworthiness. It does not show—and does not even try to show—that the full faith and credit question actually presented by the decision implicates a split of authority among lower courts. Instead, the petition merely claims the Alabama Supreme Court was wrong. But correcting purported errors from lower courts is hardly the purpose of this Court's certiorari jurisdiction. That is all the petitioner asks the Court to do, and her petition should be denied for that reason alone.

Beyond that, there is another reason to deny the petition. If the issue is as important as the petitioner believes, then this Court would be well served to allow it to percolate further in the lower courts before settling it. To date, there has been no percolation at all—indeed, the court below appears to be the only one ever to have squarely addressed the issue. It has been a century since the last time this Court addressed how the full faith and credit obligation applies to an adoption decree. *See Hood v. McGehee*, 237 U.S. 611, 615 (1915). And the adoption here is not just *any* adoption; it is a singular kind of adoption whose legality is contested in the states and which is plainly forbidden by the law of the state whose court issued it. Before wading into these waters, the Court should allow other courts to weigh in. Given the petitioner's assurances that similar adoptions have been granted in many states, the full faith and credit issue is likely to come up in future cases. When there is an actual split of authority on the issue—something manifestly absent at present—the Court could then choose to intervene.

The final reason not to grant the petition is that the lower court's decision was correct. The Alabama Supreme Court repeatedly invoked the settled principle that full faith and credit permits re-examination of the jurisdiction, but not the merits, of a sister state judgment. Carefully applying that principle, the Alabama court determined that the Georgia court simply lacked power—and hence, jurisdiction—to award a second parent adoption. This was not, the court explained, a mere technical defect nor an issue that went to the adoption's "merits." Instead, the Georgia decree facially violated a basic condition for adoptions plainly set forth in the Georgia statute. In

short, this was not an adoption that the Georgia court *should not* have granted; it was one the Georgia court *could not* have granted under Georgia law. That is a jurisdictional defect under the Full Faith and Credit Clause. *See Fauntleroy v. Lum*, 210 U.S. 230, 234-35 (1908) (a merits issue pertains to "the duty of the court," whereas a jurisdictional issue pertains to "[the court's] power"). The Alabama Supreme Court thus correctly determined that the Georgia adoption was not entitled to recognition in Alabama.

STATEMENT

A. Factual Background

Respondent E.L., a lifelong resident of Alabama, is the biological mother of three children through artificial insemination. In December 2002 she gave birth to S.L., and, in November 2004, to twins, N.L. and H.L. At the time, E.L. was living in Hoover, Alabama with petitioner V.L, a woman with whom she had been in a relationship since 1995. V.L. acted as the children's parent along with E.L. *See generally* Pet. App. 5a; E.L. Aff. ¶ 2, Mar 11, 2014.

In 2006, V.L. and E.L. decided they wanted V.L. to adopt the children and make both women legal parents. According to V.L.'s affidavit, they began researching which jurisdictions might be "receptive" to that arrangement. Pet. App. 5a-6a. An attorney advised them that Georgia was a hospitable jurisdiction, but that V.L. "needed to be a resident of ... Georgia, specifically Fulton County, for at least six (6) months to petition for adoption[.]" *Id.* at 6a. In October 2006, V.L. and E.L. leased a house in Alpharetta, Georgia from the mother of E.L.'s college friend and subsequently

began the adoption process. According to V.L.'s affidavit, "a background check request was submitted using the Alpharetta address," and "[o]n March 26, 2007, a home study was done at the address in Georgia; per my attorney this was a requirement for petitioning for adoption." *Id.* Throughout this period, however, the couple continued to live and work in Alabama, and spent only two nights in the Georgia house, as explained in E.L.'s affidavit:

> We never moved in[to the Georgia house]. We never lived there. We spent approximately two nights there, one before the "home study." That night, we packed up the kids in the SUV along with toys, photographs, refrigerator magnets, etc. and put these things around our friend's house. We hung a bird feeder the children had made in the backyard. This was done so it would appear to the home inspector that we lived there. After the "home study" was done, we packed up and returned to our home in Hoover, Alabama. The other night we spent [in Georgia] was the night before the adoption hearing.

E.L. Aff. ¶ 5, Mar. 11, 2014; *see also* Pet. App. 6a-7a (noting E.L.'s testimony the women "never spent more than approximately two nights in [the Georgia house], instead continuing to live and work at their jobs in Alabama")

On April 10, 2007, V.L petitioned to adopt the three children in Fulton County, Georgia. Pet. App. 7a. E.L. consented to the adoption, but asserted that she did not "relinquish or surrender any parental rights to the children." Parental Consent to Adoption (Apr. 9, 2007), at 1; Pet. App. 7a. On May 30, 2007, the Georgia court

entered a final decree granting V.L.'s petition. Pet. App. 7a, 64a. The decree specified that V.L. would be recognized as the children's "second parent" but that E.L.'s parental rights as the "legal and biological mother" were "preserved intact." *Id.* at 64a. While stating generally that V.L. had "complied with all relevant and applicable formalities regarding the [adoption]," *Id.* at 63a, the court's order did not address whether Georgia law authorized granting an adoption to V.L. (who was not married to E.L.) while simultaneously leaving E.L.'s parental rights intact. Nor did the court's order address whether V.L. was a bona fide domiciliary of Georgia.

In November 2011, V.L. and E.L.'s relationship ended, and, in January 2012, V.L. moved out of the house the women had shared in Alabama. *Id.* at 7a.

B. Procedural Background

On October 31, 2013, V.L. filed a petition in a Jefferson County, Alabama circuit court alleging that E.L. was refusing her access to the children. She sought to have the Georgia adoption decree registered as a foreign judgment, to be declared a legal parent, and to be awarded custody or visitation. Pet. App. 7a-8a. The case was transferred to the Jefferson County Family Court, and E.L. moved to dismiss, *inter alia,* on the ground that the Georgia decree did not merit full faith and credit because the Georgia court lacked jurisdiction to award the adoption to V.L. *Id.* at 8a. Without holding a hearing, the family court denied E.L.'s motion to dismiss and simultaneously granted V.L. visitation rights. *Id.* E.L. timely appealed to the Alabama Court of Civil Appeals.

Initially, the appeals court agreed with E.L. that the Georgia court lacked jurisdiction to award an adoption to a non-spouse without first terminating the rights of the current parent, and that the Georgia decree was consequently not entitled to full faith and credit. *E.L. v. V.L.*, No. 2130683, slip op. at 9-13 (Ala. Civ. App. Oct. 24, 2014).[1] The court reversed itself on rehearing, however. Pet. App. 45a. It decided that any defect in the Georgia adoption went to the merits and not to jurisdiction, and that the adoption therefore merited full faith and credit. *Id.* at 52a-57a, 59a-60a. However, the court reversed the family court's award of visitation to V.L. The court explained that, before visitation could be awarded, due process required that E.L. be "entitled to due notice and an opportunity to be heard on the matter." *Id.* at 61a. The court thus remanded for "an evidentiary hearing to decide the visitation issue." Pet. App. 61a.

E.L. successfully sought certiorari from the Alabama Supreme Court, which reversed. *Id.* at 5a. The supreme court acknowledged that, in determining whether an out-of-state judgment merits full faith and credit, the court's "review ... does not extend to a review of the legal merits of [that] judgment," but is instead "limit[ed] ... to whether the rendering court had jurisdiction to enter the judgment sought to be domesticated." *Id.* at 11a, 13a. Disagreeing with the court of appeals, however, the supreme court found that the defect in the adoption implicated the Georgia court's subject matter jurisdiction. After canvassing the

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[1] This opinion has been withdrawn and is unavailable on Westlaw. *See E.L. v. V.L.*, 2014 WL 5394513 (Ala. Civ. App. Oct. 24, 2014) (withdrawing opinion).

Georgia adoption statutes and jurisprudence, the court agreed with E.L. that Georgia law "makes no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents." *Id.* at 27a (citing *Wheeler v. Wheeler*, 642 S.E.2d 103, 104 (Ga. 2007) (Carley, J., dissenting from denial of certiorari); *Bates v. Bates*, 730 S.E.2d 482, 484 (Ga. Ct. App. 2012)). As the court explained, Georgia law makes termination of the current parent's rights a necessary "condition" before an adoption may be granted to a non-spouse. Pet. App. 30a (citing Ga. Code Ann. § 19-8-5(a)). Consequently, the undisputed failure of E.L. to surrender her parental rights resulted in a "void" adoption that the Georgia court "was not empowered to enter." Pet. App. 30a.

Because it resolved the case on those grounds, the Alabama Supreme Court did not reach E.L.'s alternative argument that the Georgia court lacked jurisdiction to award an adoption to V.L. because she never established a bona fide domicile in Georgia. *Id.* at 30a n.10; *see* Ga. Code Ann. § 19-8-3(a)(3) (to petition for adoption a person must, *inter alia*, have "been a bona fide resident of [Georgia] for at least six months immediately preceding the filing of the petition").

On November 16, 2015, V.L. timely petitioned this Court for a writ of certiorari. On December 14, 2015, this Court granted V.L.'s application to recall and stay the Alabama Supreme Court's certificate of judgment. Order in Nos. 15A522, 15A532 (U.S. Dec. 14, 2015).

REASONS FOR DENYING THE PETITION

I. V.L.'s petition is not certworthy.

A. There is no split of lower court authority on the question presented in this case.

V.L's petition does not even attempt to argue that the decision below implicates a split among lower courts, thus failing the most elementary test of certworthiness. *See, e.g., Braxton v. U.S.*, 500 U.S. 344, 347 (1991) (explaining a "principal purpose" of certiorari jurisdiction is "to resolve conflicts among the United States courts of appeals and state courts"). She claims only that the Alabama Supreme Court misapplied settled law. *See* Pet. 28 (asserting the decision is an "unprecedented application of the Full Faith and Credit Clause"). Even if she were right about that (and she is not, *see infra* II), the fact remains that error-correction is the weakest basis for granting certiorari. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of ... the misapplication of a properly stated rule of law."); *Tolan v. Cotton*, 134 S. Ct. 1861, 1868 (2014) (Alito, J., concurring) (noting "'error correction ... is outside the mainstream of the Court's functions and ... not among the 'compelling reasons' ... that govern the grant of certiorari'") (quoting S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 352 (10th ed. 2013)) (brackets omitted).

While V.L.'s petition never accurately states it, the issue in this case is whether a state court owes full faith and credit to a sister-state adoption decree that was not merely erroneous but *void* under the sister-

state's adoption law. *See infra* II. As the Alabama Supreme Court found, the Georgia court purported to award an "adoption" to V.L. that, on its face, negated the fundamental condition for a Georgia adoption—it expressly refused to terminate the existing rights of the children's current parent. *See* Pet. App. 30a (noting that Georgia Code § 19-8-5(a) "defines the condition that must exist before such superior courts can grant adoptions to third parties such as V.L."). That defect, the court reasoned, went not to whether the Georgia court *should* have granted the adoption, but whether it had the *power* to grant such an adoption at all. Pet. App. 30a The court therefore concluded that the defect implicated the Georgia court's subject matter jurisdiction, thus depriving the adoption of full faith and credit under settled law. *Id.*

V.L. cites no case, state or federal, that reaches a different conclusion on a remotely comparable set of facts. She does not even try. Instead, V.L extravagantly claims that the Alabama Supreme Court's decision is a "gross deviation" from this Court's (and other courts') full faith and credit jurisprudence. Pet. 28. She is mistaken, *see infra* II, but the more salient point is that she avoids asserting that the Alabama decision *conflicts* with any decision from this Court or from any lower court, state or federal. There is good reason for that. The Alabama Supreme Court simply applied the settled principle that a judgment merits full faith and credit "only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment." *Williams v. North Carolina*, 325 U.S. 226, 229 (1945). Every case V.L. cites, *see* Pet. 28-29, recognizes that venerable limitation on the Full Faith and Credit Clause. *See, e.g., Mack v. Mack*, 618 A.2d

744, 750 (Md. Ct. App. 1993) (because "[t]he mandate of [the Full Faith and Credit Clause] is not absolute, ... [i]t is proper for a forum court to examine the jurisdiction of the deciding court to determine whether the foreign judgment must be accorded full faith and credit") (citing, *inter alia*, *Milliken v. Meyer*, 311 U.S. 457, 462 (1940)). In the decision below, the Alabama Supreme Court applied precisely that principle and found that the Georgia court lacked power to award the adoption at issue. *See* Pet. App. 24a (noting this Court's "distinction between a subject-matter jurisdiction challenge and a merits-based challenge" under the Full Faith and Credit Clause) (and discussing *Fauntleroy v. Lum*, 210 U.S. 230, 234-35 (1908)).

V.L. also mistakenly claims that the Alabama Supreme Court's decision is a "stark departure" from how other state courts have addressed the full faith and credit due sister-state adoptions. Pet. 30. To the contrary, the state decisions V.L. cites recognize exactly the same limitation on full faith and credit as the one applied by below.[2] And, again, V.L. avoids

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[2] *See, e.g.*, *In re Trust Created by Nixon*, 763 N.W.2d 404, 409 (Neb. 2009) (noting that while "the U.S. Constitution prohibits a Nebraska court from reviewing the merits of a judgment rendered in a sister state, ... a foreign judgment can be collaterally attacked by evidence that the rendering court was without jurisdiction over the parties or the subject matter"); *Giancaspro v. Congleton*, 2009 WL 416301, at *2 (Mich. Ct. App. Feb. 19, 2009) (observing that "[a] state need not give full faith and credit to a judgment issued by a court that lacked subject-matter jurisdiction over the litigation or jurisdiction over the parties"); *Hersey v. Hersey*, 171 N.E. 815, 819 (Mass. 1930) (explaining that, with respect to recognizing an out-of-state adoption, "[c]omplete inquiry is permissible into the circumstances of a judgment of a sister state

claiming that the lower court's decision conflicts with any of those cases. In fact, the closest case she cites, *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002), may *support* the Alabama Supreme Court's analysis. In *Russell*, the Nebraska Supreme Court suggested that a Pennsylvania court may have lacked jurisdiction to award a non-spousal adoption where the child's parent had retained her rights. *See id.* at 59-60 (considering whether, due to alleged lack of termination of parental rights, parent may "collaterally attack the judgment on the basis that the Pennsylvania court lacked subject matter jurisdiction").[3] Thus, far from showing that the Alabama Supreme Court's decision "starkly departs" from other state courts, V.L.'s cases show it is consistent with those courts' treatment of full faith and credit and adoptions.

Finally, V.L. persistently mischaracterizes the reasoning of the Alabama Supreme Court's decision, seeking to create the impression that it would deny full faith and credit to a wide array of sister-state adoptions. Principally, she claims the court "adopt[ed] a new understanding of 'jurisdiction,'" that would authorize collateral attacks on sister-state adoptions

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to determine whether it binds the person against whom it is invoked," and confirming that "[t]here may be searching investigation into the jurisdiction of the court in which the judgment is rendered, over the subject-matter, or the parties affected by it, or into the facts necessary to give such jurisdiction") (quotations omitted).

[3] The court did not reach the issue, however, because no evidence showed the parent's failure to surrender her rights. *Id.* In the present case, of course, "it is undisputed that E.L. did not surrender her parental rights[.]" Pet App. 30a.

"*whenever* the issuing court allegedly failed to strictly comply with a statutory provision." Pet. 32, 31 (emphasis in original). That is false. In its decision, the Alabama Supreme Court merely referenced the common interpretive principle that adoption statutes, because they are in derogation of common law, should be strictly construed in favor of the rights of natural parents. Pet. App. 29a (citing *In re Marks*, 684 S.E.2d 364, 367 (Ga. 2009)); *see also, e.g., Matter of Adoption of Robert Paul P.*, 471 N.E.2d 424, 426 (N.Y. Ct. App. 1984) (explaining that, "because adoption is entirely statutory and is in derogation of common law, the legislative purposes and mandates must be strictly observed") (citations omitted). The court correctly applied this principle to determine whether Georgia law authorized an adoption in favor of a non-spouse without terminating the existing parent's rights. *See* Pet. App. 30a (interpreting Ga. Code Ann. § 19-8-5(a)). But the court never suggested that any and every flaw in an adoption qualifies as jurisdictional. To the contrary, after identifying the specific defect in this case, the court remarked that "[o]ur inquiry does not end here, however, as that error is ultimately of no effect unless it implicates the subject-matter jurisdiction of the Georgia court." Pet. App. 28a.

B. V.L.'s overstated and speculative "harm" argument does not justify granting certiorari.

V.L. claims that the decision below will "harm Alabama families" by broadly negating adoptive rights granted in other states if there is *any* defect in the adoption, no matter how minor Pet. 32. More narrowly, she also predicts that the decision will harm

others in her situation because Georgia and other states grant adoptions that "allow[ ] an unmarried second parent to adopt without terminating the existing parent's rights." *Id.* Neither argument justifies granting certiorari in this case.

V.L.'s broader harm argument depends on her distortion of the decision below to mean that "*any* Georgia adoption that deviates from statutory requirements can be collaterally attacked in Alabama." Pet. 34 (emphasis in original). As already explained, that caricatures the Alabama Supreme Court's decision. *Supra* I.A. Far from holding that "any" defect opens a sister-state adoption to collateral attack, the lower court held only that a particular defect would do so—namely, when the decree defies the plain statutory requirement that the current parent relinquish her rights. Pet. App. 23a, 28a-30a. That defect, the court explained, did not result merely in an adoption that *should not* have been granted; it resulted in one that *could not* have been granted under Georgia law. *Id.* at 30a (concluding "the Georgia court was not empowered to enter the Georgia judgment declaring V.L. to be an adoptive parent of the children"). Contrary to V.L.'s argument, then, the Alabama Supreme Court's decision authorizes collateral attacks on adoptions only for a defect that implicates the issuing court's jurisdiction, which is a settled rule in full faith and credit jurisprudence.

V.L.'s more specific harm argument focuses on the wrong thing. How often "second parent" adoptions are granted to unmarried couples (in Georgia or elsewhere)

is not the relevant question for certiorari purposes.[4] Instead, the relevant question is whether the granting of such adoptions has led to lower court decisions exploring whether they merit full faith and credit in other states. Yet V.L. cites only one such decision, *Russell v. Bridgens*, which, as explained above, may support the Alabama Supreme Court's decision but ultimately did not resolve the issue. *See Russell*, 647 N.W.2d at 59-60. If this full faith and credit question arises in future cases, a division of authority may develop justifying certiorari. V.L.'s inability to cite any significant number of lower court decisions on this issue, much less a split of authority, shows that the moment has not arrived.

Moreover, the Court's usual practice of allowing an issue to percolate in lower courts has special force here. *See, e.g., California v. Carney*, 471 U.S. 386, 401 n.11 (1985) (Stevens, J., dissenting) (observing that "percolation allows a period of exploratory consideration and experimentation by lower courts before the Supreme Court ends the process with a nationally binding rule'") (internal quotations and citation omitted). This Court has never considered whether an adoption merits the "exacting" level of full faith and credit that adversarial judgments do. *Baker*

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[4] Such adoptions are evidently granted in some states, but the reported appellate decisions diverge on whether they are authorized by state law. *Compare, e.g., Boseman v. Jarrell*, 704 N.E.2d 494, 501 (N.C. 2010) (concluding North Carolina courts lacked subject-matter jurisdiction to award a non-spousal adoption that failed to terminate the rights of the child's biological parent), *with In re Adoption of M.A.*, 930 A.2d 1088, 1098 (Me. 2007) (interpreting "ambiguous" Maine adoption statute to allow joint adoption by unmarried couple).

by Thomas v. General Motors Corp., 522 U.S. 222, 233 (1998). In *Hood v. McGehee*, 237 U.S. 611, 615 (1915), the Court decided only that full faith and credit did not prohibit Alabama from excluding out-of-state adoptees from its inheritance laws. Since *Hood*, decided a century ago, the Court has never again explored how full faith and credit applies to adoptions.

The nature of adoption decrees raises difficult issues under the Full Faith and Credit Clause. Most full faith and credit jurisprudence addresses judgments (typically money judgments) that are the product of adversarial proceedings and that can be readily enforced by another state regardless of the nature of the underlying claim. *See, e.g., Mills v. Duryee*, 11 U.S. (7 Cranch.) 481, 483-84 (1813) (addressing credit owed to a New York debt judgment in District of Columbia courts); *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439 (1943) (discussing full faith and credit obligation requiring enforcement of sister-state judgments "for ... taxes, or for a gambling debt, or for damages for wrongful death"). By contrast, an adoption decree is typically the product of a non-adversarial proceeding; and, unlike a money judgment, it is largely a forward-looking decree, forging new relationships that seek integration into a new state's family laws. These characteristics of adoptions may present full faith and credit issues not encountered with other kinds of judgments. *See, e.g., New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 616 (1947) (Frankfurter, J., concurring) (in full faith and credit context, "[c]onflicts arising out of family relations raise problems and involve considerations very different from controversies to which debtor-creditor relations give rise"). For instance, they may implicate problems like those long

experienced by federal courts when adjudicating interstate recognition of child custody decrees. *See Thompson v. Thompson*, 484 U.S. 174, 180-81 (1988) (describing difficulties in applying full faith and credit doctrine to child custody decrees, leading to enactment of federal Parental Kidnaping Prevention Act, 28 U.S.C. § 1738A).

Furthermore, the specific kind of adoption at issue in this case—a "second parent" adoption—presents peculiar difficulties that counsel in favor of awaiting further percolation. V.L.'s petition asserts that trial courts "in numerous other states" have granted second parent adoptions to unmarried couples "without any appellate authority expressly affirming the validity of such adoptions." Pet. 36. A footnote adds that, while a "majority of states" grant these adoptions to unmarried couples, "only about ten states have expressly authorized such adoptions either by statute or case law." *Id.* n.10. What V.L. appears to concede here is that a significant share of the second parent adoptions granted to unmarried couples in the United States—including the one granted by the Georgia court in this case—are not authorized by state law. Yet she candidly asks this Court to grant her petition and force every state to recognize these unauthorized adoptions under the Full Faith and Credit Clause, despite the fact that, by her own admission, the laws of "only about ten states" permit them. *Id.* Given the uncertain legality of second parent adoptions—which V.L.'s own petition admits—the Court should await further percolation on the full faith and credit question before wading into this complex and uncertain area.

II. The Alabama Supreme Court correctly refused to accord full faith and credit to the Georgia decree.

Instead of identifying any split on the underlying question, V.L.'s petition argues only that the Alabama Supreme Court's decision was erroneous. She claims the decision: (1) examined the *merits* of the Georgia adoption, in violation the full faith and credit principle authorizing examination only of the court's *jurisdiction* (Pet. 13-15, 16-18); (2) failed to apply the presumption that the Georgia court, as a court with subject matter jurisdiction over adoptions, had jurisdiction to grant the adoption in this case (*id.* at 15, 18-20); and (3) ignored the rule that even jurisdictional collateral attacks are barred if the issuing court made its own "jurisdictional determination" (*id.* at 15-16, 24-26). V.L. is mistaken on all three grounds.

A. The Alabama Supreme Court correctly found that the defect in the Georgia adoption was jurisdictional.

Contrary to V.L.'s argument, the Alabama Supreme Court recognized and applied the settled rule denying full faith and credit to a sister-state judgment on the basis of the judgment's jurisdictional defects.[5] Drawing

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[5] *See* Pet. App. 11a ("emphasiz[ing]" that "our review does not extend to a review of the legal merits of the Georgia judgment ... because we are prohibited from making any inquiry into the merits ... by Art. IV. § 1, of the United States Constitution"); *id.* at 13a (observing "the question of a court's jurisdiction over the subject matter or parties is one of the few grounds upon which a judgment

on Justice Holmes' seminal discussion from *Fauntleroy v. Lum*, the Alabama court observed that the sometimes "difficult" distinction between jurisdiction and merits—or as Justice Holmes put it, the question of whether a statutory requirement is framed in terms of a court's "power" or "duty"—ultimately comes down to "a question of construction and common sense." Pet. App. 24a (quoting *Fauntleroy*, 210 U.S. at 234-25).

Applying that framework, the Alabama Supreme Court correctly determined that the Georgia court lacked power to award the kind of adoption at issue and that the defect in the adoption was therefore jurisdictional. The court concluded that the Georgia adoption statutes "*make no provision* for a non-spouse to adopt a child without first terminating the parental rights of the current parents." Pet. App. 27a (emphasis added). Thus, the decree purporting to grant parental rights to V.L., while expressly preserving the parental rights of E.L., was "void" because it contravened the basic "condition that must exist before [Georgia] courts can grant adoptions to third parties such as V.L."—namely the surrender of rights by all living parents of the children. *Id.* at 30a (citing Ga. Code Ann. § 19-8-5(a)). The court properly concluded that this flaw in the decree was jurisdictional because it went not merely to the Georgia's court's "duty," but rather to its "power" to grant the adoption at all. See Pet. App. 30a (concluding "the Georgia court *was not empowered* to enter the Georgia judgment declaring V.L. to be an adoptive parent of the children") (emphasis added). In

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may be challenged"); *id.* at 28a (any error in Georgia decree "is ultimately of no effect unless it implicates the subject-matter jurisdiction of the Georgia court").

other words, instead of resulting in an adoption that *should not* have been entered by the Georgia court, the defect in this case resulted in an adoption that *could not* have been entered under Georgia law. That is a jurisdictional flaw for purposes of full faith and credit. *See id.* at 24a (a merits-based requirement only "define[s] the duty of the court," whereas a jurisdictional requirement "is meant to limit its power") (quoting *Fauntleroy*, 210 U.S. at 234-35).

V.L. completely fails to engage the Alabama Supreme Court's conclusion that the adoption in this case was void under Georgia law. Instead, she merely points out that the Georgia court in question had exclusive jurisdiction over adoptions and says that "should have been the end of the matter for purposes of the Full Faith and Credit Clause." Pet. 16-17 (citing Ga. Code Ann. § 19-8-2(a)). That begs the question. The fact that the court had jurisdiction over adoptions in general says nothing about whether the adoption granted here was within the authority conferred by Georgia law. As this Court has explained, a general statutory grant of jurisdiction does not foreclose re-examining jurisdiction in a particular case if jurisdiction is "disproved by extrinsic evidence, or by the record itself." *Adam v. Saenger*, 303 U.S. 59, 62 (1938). Here the record shows that the adoption granted to V.L. contravened a basic condition of an adoption under Georgia law. Pet. App. 30a. The fact that the court that granted this void adoption had exclusive jurisdiction over adoptions as a class of cases cannot create authority where there is none to begin with.

Notably, V.L. does not cite a single decision from a Georgia court standing for the proposition that the flaw in the Georgia decree goes only to the merits and not to jurisdiction. She dismisses statements from a Georgia Supreme Court Justice and the Georgia court of appeals strongly suggesting that the Alabama Supreme Court was right: Georgia courts lack the power to grant the kind of adoption granted in this case, which is therefore void. *See Wheeler*, 642 S.E.2d at 104 (Carley, J., dissenting from denial of certiorari) (stating that Georgia law "specifically proscribes" a second parent adoption in favor of a non-spouse and questioning whether courts have "'the power to grant such an adoption under the existing adoption statutes'") (quoting *In the Interest of Angel Lace M.*, 516 N.W.2d 678, 681 (Wis. 1994))[6]; *Bates*, 730 S.E.2d at 484 (noting in *dicta* that "[t]he idea that Georgia law permits a 'second parent' adoption is a doubtful one") (citing *Wheeler*, 642 S.E.2d at 103 (Carley, J., dissenting from denial of certiorari). And she fails to address decisions from other jurisdictions questioning the power of state courts to grant second-parent adoptions to persons not

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[6] V.L. argues that Justice Carley would have found that the defect goes to the merits and not to jurisdiction because he identified it as a "nonamendable defect" under Georgia Code § 9-11-60(d)(3), instead of § 9-11-60(d)(1) (addressing lack of jurisdiction over "the person or the subject matter"). Pet. 19-20. V.L. is mistaken. First, the section referenced by Justice Carley refers, not merely to a failure to state a claim, but rather to a defect that "affirmatively show[s] no claim in fact existed." Ga. Code Ann. § 9-11-60(d)(3). Second, Justice Carley's opinion emphasized that the defect in question was not a "technical flaw" in the adoption but rather an indication that the adoption was "unauthorized" and "specifically proscribe[d]" by Georgia law. *Wheeler*, 642 S.E.2d at 104-05 (Carley, J., dissenting from denial of certiorari).

married to the child's living parent. *See S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 823 & n.13 (Ky. App. Ct. 2008) (collecting cases); *see also Boseman*, 704 N.E.2d at 501 (holding North Carolina courts lacked subject-matter jurisdiction to grant such adoptions).

Instead of discussing any cases about state jurisdiction to award second-parent adoptions, V.L. relies on inapposite federal cases that find non-jurisdictional such requirements as the Title VII employee threshold (*Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006)), a territorial requirement in the securities fraud statute (*Morrison v. Nat'l Australia Bank, Ltd.*, 561 U.S. 247 (2010)), and the requirement of finding undue hardship before discharging student loan debt in bankruptcy (*United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010)). Pet. 17 The statutory prerequisites in those cases, however, did not go to the "tribunal's power" but only to "whether the allegations the plaintiff makes entitle him to relief." *Morrison*, 561 U.S. at 247 (quotations omitted). By contrast, the surrender of parental rights goes to the *power* of Georgia courts to enter an adoption at all. As the lower court found, an adoption that fails to sever the current parent's rights is a legal impossibility under Georgia law and is therefore void.[7]

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[7] V.L. also relies on her erroneous claim that the Alabama Supreme Court held that *any* statutory error in an adoption proceeding would leave an adoption open to collateral attack in other states, thereby "creat[ing] a massive loophole in the Full Faith and Credit Clause." Pet. 22. As explained above, however, *supra* I.A, the Alabama Supreme Court limited its holding to jurisdictional defects and recognized that any error in a sister-

In sum, the Alabama Supreme Court correctly determined that the defect in the Georgia decree implicated, not (or not only) the *merits* of the adoption, but rather the court's *power* to award it in the first place. Thus, the lower court properly recognized that the Georgia adoption is not entitled to full faith and credit. *See, e.g., Williams*, 325 U.S. at 229 (explaining that, under the Full Faith and Credit Clause, "[a] judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment").

B. Any presumption of jurisdiction is defeated by the undisputed fact that E.L. did not surrender her rights.

Alternatively, V.L. argues that the Alabama Supreme Court was required to apply a "presumption" that the Georgia court had jurisdiction to award the adoption to V.L. because, as "a court of general jurisdiction," it has subject-matter jurisdiction over adoptions. Pet. 15. V.L. misunderstands the law. As she recognizes, this "presumption" of jurisdiction applies "unless disproved by extrinsic evidence, or by the record itself." *Id.* (quoting *Milliken*, 311 U.S. at 462). In this case, the Georgia court's lack of jurisdiction to award the adoption to V.L. is amply displayed by "the record itself": it was "undisputed" that E.L. did not surrender her parental rights. Pet. App. 30a. As the Alabama Supreme Court explained, E.L.'s failure to surrender her parental rights defeats

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state adoption "is ultimately of no effect unless it implicates the subject-matter jurisdiction of the Georgia court." Pet. App. 28a.

the basic "condition that must exist" before a Georgia court can grant an adoption. *Id.* The undisputed record thus overcomes whatever presumption may operate in favor of the Georgia court's jurisdiction.

C. The Alabama Supreme Court's examination of jurisdiction is not foreclosed by *res judicata*.

Alternatively, V.L. argues that the Georgia court's jurisdiction is *res judicata* because the Georgia court made a "determination" that it had jurisdiction to award the adoption without terminating E.L.'s parental rights. Pet. 15, 24. V.L. is again mistaken.

The rule to which V.L. refers demands, as she concedes, that the issuing court have "made a jurisdictional determination that is itself entitled to *res judicata*." *Id.* at 15. This means that jurisdictional questions must "'have been fully and fairly litigated and finally decided in the court which rendered the original judgment' " *Underwriters Nat'l Assur. Co. v. N.C. Life & Acc. & Health Ins. Guar Ass'n*, 455 U.S. 691, 706 (1982) (quoting *Durfee v. Duke*, 375 U.S. 106, 111 (1963)). With respect to this case, then, the question is whether the Georgia court "fully and fairly litigated" its authority to grant an adoption to a non-spouse without terminating the parental rights of the current parents.

The answer is obviously no. Nothing in the adoption proceedings, or in the decree itself, suggests that the question of whether Georgia law authorizes the kind of adoption at issue was even considered, much less "fully and fairly litigated." Anticipating this problem, V.L. struggles to argue that the Georgia court "specifically

addressed" jurisdiction in its conclusion of law that declined to terminate E.L.'s parental rights. Pet. 24. But that legal conclusion did not address, nor even mention, the court's statutory authority to grant the adoption. Rather, it stated only that it would be "contrary to the children's best interests" not to recognize both women as their legal parents. *Id.*[8] Whether an adoption is in a child's best interests, however, is distinct from the prior question of the court's authority to grant the adoption in the first place. *See, e.g., Angel Lace M.*, 516 N.W.2d at 681 ("[T]he fact that an adoption—or any other action affecting a child—is in the child's best interests, by itself, does not authorize a court to grant the adoption."). Moreover, the Alabama Supreme Court did not question whether the adoption was in the children's best interests—which would indeed be a "merits" determination not re-examinable under full faith and credit. Rather, the Alabama court questioned whether the adoption was void because the Georgia court had no authority to enter it.[9]

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[8] V.L. also attempts to rely on the Georgia court's finding that she "complied with all relevant and applicable formalities" for the adoption petition. Pet. 24. But that boilerplate recitation does not even mention the court's authority to grant the adoption; *a fortiori*, it cannot amount to a "full and fair litigation" of jurisdiction for full faith and credit purposes.

[9] V.L. incorrectly claims that Georgia law forecloses a jurisdictional challenge to a court's determination of parental rights by a parent who participated in prior litigation. Pet. 25. The cases she cites, however, fail to support that assertion. *Amerison v. Vandiver*, 673 S.E.2d 850, 851 (Ga. 2009), holds only that under some circumstances laches may bar a parent's jurisdictional challenge to a termination of rights. To the extent *Marshall v. Marshall*, 360

In sum, the Georgia court did not address whether it had jurisdiction to grant the adoption in this case. Therefore, that court's jurisdiction was not *res judicata* and the Alabama Supreme Court could properly examine it.

D. Alternatively, the Georgia decree was not entitled to full faith and credit because V.L. never had a genuine domicile in Georgia.

The Alabama Supreme Court's decision could be upheld on the alternative ground that the undisputed record shows V.L. never established a bona fide Georgia domicile as required by Georgia adoption law. *See* Ga. Code Ann. § 19-8-3(a)(3) (to petition for adoption a person must have "been a bona fide resident of [Georgia] for at least six months immediately preceding the filing of the petition"); *see also, e.g., Sastre v. McDaniel*, 667 S.E.2d 896, 898 (Ga. App. 2008) (discussing residency requirement for adoptions). Although E.L. raised this issue, the Alabama Supreme Court resolved the full faith and credit issue on other grounds. *See* Pet. App. 30a n.10 (declining to consider E.L's alternative argument that "the Georgia judgment is also void because E.L. was not a bona fide resident of Georgia").

A party's failure to establish a domicile supporting a sister state judgment is a ground for denying full faith and credit to that judgment. *See, e.g., Williams*, 325 U.S. at 237 (North Carolina properly resisted full

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S.E.2d 572 (Ga. 1987), ever supported the proposition V.L. asserts, the decision is no longer good law. *See Scott v. Scott*, 644 S.E.2d 842, 844 (Ga. 2007) (overruling *Marshall*).

faith and credit to Nevada divorce where "the evidence demonstrated that petitioners went to Nevada solely for the purpose of obtaining a divorce and intended all along to return to North Carolina"); *Estin v. Estin*, 334 U.S. 541, 543 (1948) (explaining that "while the finding of domicile by the court that granted the [divorce] decree is entitled to prima facie weight, it is not conclusive in a sister State but might be relitigated there"); *Armstrong v. Armstrong*, 350 U.S. 568, 578 (1956) (allowing Ohio challenge to Florida divorce judgment on basis of lack of domicile).

Here, the record shows without contradiction that V.L. never established a bona fide domicile in Georgia. Instead, she and E.L. leased a Georgia home solely to provide a temporary setting for the "home study" required by the adoption process. *See supra* A. All the while, however, V.L. continued to live and work in Alabama and never intended to live in Georgia. Pet. App. 6a-7a; *see also, e.g., Sastre*, 667 S.E.2d at 673 ("bona fide resident" in Georgia adoption statutes means having "a single fixed place of abode with the intention of remaining there indefinitely") (quotations and citations omitted). Because "the evidence demonstrate[s] that [V.L.] went to [Georgia] solely for the purpose of obtaining [the adoption] and intended all along to return to [Alabama]," Alabama courts would have been justified in denying full faith and credit to the Georgia adoption. *Williams*, 325 U.S. at 237 (brackets added).

It is true that this Court has held, in the divorce context, that a party to the divorce cannot thereafter collaterally challenge the original court's "finding of jurisdictional facts ... made in proceedings in which the

[challenger] appeared and participated." *Sherrer v. Sherrer*, 334 U.S. 343, 349 (1948). That principle, however, would not preclude a court from denying full faith and credit to the adoption decree in this case on the basis of V.L.'s lack of domicile. The rule barring collateral attacks on jurisdictional facts is triggered only if the court issuing the original judgment actually *adjudicated* the jurisdictional question at issue. *See, e.g., Durfree*, 375 U.S. at 112 (where "the question of subject-matter jurisdiction had been fully litigated in the original forum, the issue could not be retried in a subsequent action between the parties") (citing *Davis v. Davis*, 305 U.S. 32 (1938); *Stoll v. Gottlieb*, 305 U.S. 165 (1938); *Treines v. Sunshine Mining Co.*, 308 U.S. 66 (1939)); *see also, e.g., Sherrer*, 334 U.S. at 356 (full faith and credit bars re-litigating "findings of jurisdictional fact made by a competent court"). In this case, nothing in the Georgia adoption proceedings or the decree itself suggests the issue of V.L.'s domicile was litigated at all. Furthermore, the Georgia decree makes no findings regarding V.L.'s domicile.

In sum, because V.L.'s Georgia domicile was not litigated in the Georgia proceedings, no full faith and credit principle would prevent Alabama courts from examining whether V.L. actually established a bona fide domicile sufficient to support the adoption. The record in this case provides only one possible answer to that question: V.L. "went to [Georgia] solely for the purpose of obtaining [the adoption] and intended all along to return to [Alabama]." *Williams*, 325 U.S. at 237 (brackets added). The Full Faith and Credit Clause does not require Alabama courts to recognize an adoption obtained by such jurisdictional gamesmanship.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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IN THE
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V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

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The Court should grant certiorari and reverse the Alabama Supreme Court's decision. The decision below calls into question the parental rights of thousands of adoptive parents if they ever travel or move to Alabama. And it does so based on an application of the Full Faith and Credit Clause that is irreconcilable with long-settled teachings of this Court and lower courts. A decision carrying such serious practical and jurisprudential implications warrants this Court's review.

I. This Case Warrants This Court's Review.

E.L.'s primary argument against this Court's review is that V.L.'s petition seeks mere "error correction." E.L. is incorrect. As the seven amicus briefs in support of the petition should make clear, the decision below has profound practical effects stretching far beyond the parties to this case.

First, the Petition argued that the "severe practical consequences of the decision below" warrant this Court's review. Pet. 32. It explained that the decision below "yields the ultimate conflict of authority: directly conflicting court orders in two different states," which will result in severe practical problems and forum-shopping. *Id.* E.L. denies none of this; instead, she simply asserts that there is no conflict of authority, and ignores this argument altogether. Given that this Court has expressly stated that conflicting orders on parental rights are a basis for granting certiorari, *id.* at 33 (citing *Webb v. Webb*, 451 U.S. 493, 494 (1981)), this Court's review is warranted for that reason alone.

Second, the Petition explained that the Alabama

Supreme Court's opinion effectively stripped all parents who obtained Georgia adoptions similar to V.L.'s of their parental rights, which will have catastrophic effects on those families. Pet. 33-34. It also established that most states in which trial courts routinely grant such adoptions are similar to Georgia in that no statute or appellate case law expressly addresses whether they are permissible. Thus, the Alabama Supreme Court's decision would apply equally to the thousands of parents who obtained similar adoptions in such states. Pet. 34-36 & n.10.

E.L. does not dispute that this is an accurate characterization of the decision below. In fact, she openly embraces the proposition that adoptions similar to V.L.'s from the majority of states that grant such adoptions—not just Georgia—are now invalid in Alabama. Resp. 16.

The effect of the Alabama Supreme Court's decision—even if confined to adoptions by unmarried second parents—is staggering. Contrary to E.L.'s conclusory assertion, such adoptions are not "unusual." Resp. 1. As the Petition explained (and as E.L. does not dispute), prior to the availability of equal marriage rights for same-sex couples, the only way for most same-sex couples to obtain parental rights was for one of the partners to adopt a child while preserving the parental rights of the parent's partner. Pet. 36. Even before the legalization of marriage for same-sex couples, many same-sex couples were raising children. *See United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013) (stating that DOMA "humiliates tens of thousands of children now being raised by same-sex

couples"). And such couples frequently protected their parental rights through adoptions similar to V.L.'s. Such adoptions have been granted since at least the mid-1980s, long before same-sex couples could marry, and have been "routinely granted by trial court judges, even in the absence of appellate case law." Nancy D. Polikoff, *Recognizing Partners But Not Parents / Recognizing Parents But Not Partners: Gay and Lesbian Family Law in Europe and the United States*, 17 N.Y.L. Sch. J. Hum. Rts. 711, 731-32 (2000). For instance, the California Supreme Court noted that 10,000 to 20,000 second parent adoptions had been granted in California alone before its decision in 2003 expressly authorizing such adoptions. *Sharon S. v. Superior Court*, 73 P.3d 554, 568 (Cal. 2003). Extrapolating nationwide, and including both same-sex and opposite-sex unmarried couples, it is likely that the number of adoptions granted to a parent's unmarried partner numbers in the hundreds of thousands. Many, if not most, of these adoptions will now be unrecognized in Alabama.

E.L. asserts that there have been a small number of reported cases involving collateral attacks on adoptions by second parents, and concludes that this issue requires further "percolation." But counting up the number of such reported cases provides a misleading picture of the effect of the Alabama Supreme Court's ruling. Only a tiny fraction of adoptions yield subsequent custody disputes in which a parent tries to invalidate the adoption retroactively; yet the Alabama Supreme Court's decision will invalidate all adoptions similar to V.L.'s, even for parents who are still

together.

Moreover, even though collateral attacks on such adoptions are infrequent relative to the *total* number of such adoptions, they are not uncommon in *absolute* terms. The Petition catalogued several Full Faith and Credit disputes involving such adoptions, Pet. 30-31, and there is a large body of law addressing collateral challenges to such adoptions within the States in which they were originally granted. E.L. cites a case from North Carolina which is the only case that has ever authorized such a collateral challenge;[1] she neglects to mention the substantial number of decisions barring such collateral challenges,[2] and the similarly substantial number of decisions affirmatively authorizing such adoptions, even in the absence of explicit statutory authorization.[3] To be sure, the permissibility of such

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[1] Resp. Br. 14 n.4, 21 (citing *Boseman v. Jarrell*, 704 N.E.2d 494, 501 (N.C. 2010)).

[2] *E.g.*, *In re Adoption of D.P.P.*, 158 So. 3d 633 (Fla. Dist. Ct. App.), *review denied sub nom. C.P. v. G.P.*, 148 So. 3d 769 (Fla. 2014); *Mariga v. Flint*, 822 N.E.2d 620 (Ind. Ct. App. 2005); *Schott v. Schott*, 744 N.W.2d 85 (Iowa 2008); *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ky. Ct. App. 2008); *Usitalo v. Landon*, 829 N.W.2d 359 (Mich. Ct. App. 2012); *In re Adoption of T.A.M.*, 791 N.W.2d 573 (Minn. Ct. App. 2010); *In re Adoption Petition of Rebecca M.*, 178 P.3d 839 (N.M. Ct. App. 2008); *Goodson v. Castellanos*, 214 S.W.3d 741 (Tex. App. 2007).

[3] *E.g.*, *Sharon S.*, 73 P.3d 554; *In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. 1995); *In re Adoption of Doe*, 326 P.3d 347 (Idaho 2014); *Adoption of M.A.*, 930 A.2d 1088 (Me. 2007); *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); *In re Jacob*, 660 N.E.2d 397 (N.Y.

adoptions remains an open question in many states (including Georgia), which is precisely why the Alabama Supreme Court's opinion is so consequential—any such adoption granted in those States is subject to collateral attack in Alabama under the Alabama Supreme Court's reasoning. The volume of cases already addressing such attacks underscores that this case is worthy of this Court's review.

Third, and even worse, the Alabama Supreme Court's reasoning applies to all adoptions, not just adoptions like V.L.'s. The Alabama Supreme Court held that the Georgia Superior Court's error was "jurisdictional" based on Georgia case law holding that adoption statutes should be strictly construed. This reasoning would apply in indistinguishable form to *any* statutory defect in *any* adoption in *any* state. Pet. 34-35.

E.L. asserts that the Alabama Supreme Court "merely referenced the common interpretative principle that adoption statutes, because they are in derogation of common law, should be strictly construed in favor of the rights of natural parents," but that "the court never suggested that any and every flaw in an adoption qualifies as jurisdictional." Resp. 12. In fact, however, the strict-construction principle formed the *entire* legal basis of the Alabama Supreme Court's jurisdictional holding. App. 23a-24a. Neither the Alabama Supreme Court, nor E.L., identifies anything

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1995); *In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002); *In re Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993).

about the purported statutory defect in V.L.'s adoption that would make it any more "jurisdictional" than any other purported statutory defect. As the dissent correctly stated: "this case creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." App. 35a.

Fourth, the stark departure of the decision below from full faith and credit jurisprudence warrants this Court's review. E.L. makes the unremarkable point that other courts have recognized that judgments can be denied full faith and credit for lack of subject-matter jurisdiction, but refuses to acknowledge that the decision below reached far beyond this principle. As E.L. apparently concedes, aside from a small number of inapposite "wrong forum" challenges,[4] the decision below is the first successful collateral attack *ever* on an out-of-state judgment for lack of subject-matter jurisdiction. Pet. 28-30. It is also the first case *ever* refusing to grant full faith and credit to an adoption on the ground that a state court misinterpreted its own state's adoption requirements.[5] Pet. 30-31. The

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[4] As the Petition explained, this Court and lower courts have sustained collateral attacks on out-of-state judgments for lack of subject-matter jurisdiction when a party alleged that a suit was brought in the wrong forum. Pet. 28-30 (citing, *inter alia*, *Williams v. North Carolina*, 325 U.S. 226 (1945), and *Kalb v. Feuerstein*, 308 U.S. 433 (1940)).

[5] E.L. argues that *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002),

Alabama Supreme Court's decision is a blow to interstate comity that lacks any precedent in the case law of this or any other Court.

Finally, E.L. advocates a view of the Full Faith and Credit Clause that is even *more* radical than the view adopted by the Alabama Supreme Court. E.L. suggests that adoptions might not be entitled to full faith and credit *at all*, and suggests that "percolation" on this novel theory is warranted. Resp. 14-16.

This argument lacks merit. As E.L. herself observes, it has been 100 years since this Court last applied the Full Faith and Credit Clause in an adoption case; and E.L. does not cite a single case, or even secondary source, from that 100-year interval supporting her theory that the Full Faith and Credit Clause discriminates against adoption judgments. This is hardly surprising: not only does such a rule have no basis in the text or history of the Full Faith and Credit Clause, but it would have devastating effects on families who rely on the finality of adoption judgments. *See, e.g.*, Amicus Brief of Donaldson Adoption Institute

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supports the Alabama Supreme Court's decision. Resp. 11. It does not. In *Russell*, the Nebraska Supreme Court reversed a decision denying recognition to a Pennsylvania adoption similar to V.L.'s based on the insufficiency of the summary judgment record, while noting that an impending Pennsylvania Supreme Court case would moot the Nebraska litigation by deciding the propriety of such adoptions under Pennsylvania law. 647 N.W.2d at 60. A few months later, the Pennsylvania Supreme Court held that such adoptions were permissible. *In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002).

et al., at 8-19; Amicus Brief of Gay & Lesbian Advocates & Defenders *et al.*, at 7-28. Even E.L. herself never suggested in the lower-court proceedings that the Full Faith and Credit Clause might not apply to adoptions. E.L.'s unsupported musings about adoption law are no basis to deny certiorari.

II. The Decision Below Violated The Full Faith And Credit Clause.

The decision below is irreconcilable with a century of Full Faith and Credit jurisprudence.

E.L. asserts that V.L.'s adoption is not entitled to full faith and credit because it supposedly "defies" a "plain statutory requirement" that the parental rights of the existing parent be terminated. Resp. 13. As an initial matter, E.L. does not grapple with the wealth of cases which have interpreted indistinguishable statutory language to *authorize* adoptions like V.L.'s, on the theory that like most statutory requirements, the parental-termination requirement can be waived. *See e.g.*, *Sharon S.*, 73 P.3d at 561 (holding that because similar provisions of California adoption statute "are for the benefit of the parties to an adoption petition and the section contains no language prohibiting a waiver, we conclude that [the statute] declares a legal consequence of the usual adoption, waivable by the parties thereto, rather than a mandatory prerequisite to every valid adoption" (citations omitted)); *In re Jacob*, 660 N.E.2d 397, 405 (N.Y. 1995) ("[I]t is clear that [the termination provision of the New York adoption statute], designed as a shield to protect new adoptive families, was never intended as a sword to prohibit otherwise beneficial intrafamily adoptions by

second parents."). Thus, the Georgia Superior Court judge interpreted the Georgia Adoption Code in a manner consonant with most state courts to have considered the issue.

But even if V.L.'s adoption violated state law, that would be irrelevant for full faith and credit purposes unless the Georgia Superior Court's error was *jurisdictional*. And E.L. offers no argument, beyond *ipse dixit*, that the Georgia Superior Court's purported error was a jurisdictional error, rather than an error on the merits. She makes no attempt to reconcile the Alabama Supreme Court's decision with this Court's oft-stated rule that jurisdictional limitations in a statute must be stated clearly. Pet. 16-18.

Nor does E.L. reconcile the decision below with this Court's case law holding that under the Full Faith and Credit Clause, a court must *presume* that an out-of-state court of general jurisdiction possessed jurisdiction to enter a judgment. No binding Georgia precedent defeats this presumption. Pet. 18-20. E.L. argues that "the undisputed record" establishes that "E.L. did not surrender her parental rights," Resp. 22-23, but this argument misses the point. E.L.'s burden is not to prove that she retained her parental rights; it is to show that her retention of parental rights stripped the Superior Court of jurisdiction. She has failed to meet this burden.

Even if the parental-termination requirement was jurisdictional, the Alabama Supreme Court would still have been barred from overturning the Georgia Superior Court's judgment. The Georgia Superior Court made an explicit "Conclusion of Law" that V.L.

had "complied" with all "formalities ... in accordance with the laws of the State of Georgia," and expressly considered the applicability of the termination provision, concluding that V.L. could adopt the children without terminating E.L.'s parental rights, App. 50a. That determination was itself entitled to *res judicata*. Pet. 24-26. E.L.'s effort to twist this language in order to show that the Superior Court did not address the legal basis for the adoption (Resp. 23-25) is both unpersuasive on its own terms, and inconsistent with a basic principle of the Full Faith and Credit Clause: the presumption of regularity attending out-of-state judgments. The Georgia Superior Court was legally obligated to independently determine its own jurisdiction. *Turner v. Flournoy*, 594 S.E.2d 359, 361 n.1 (Ga. 2004). Because the Georgia Superior Court fulfilled that legal obligation and determined that it possessed subject-matter jurisdiction, the Alabama court was required to recognize that determination as *res judicata*.[6]

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[6] Moreover, the Georgia adoption would not have been susceptible to collateral attack in the courts of Georgia. Although E.L. relies on *Bates v. Bates*, 730 S.E.2d 482 (Ga. Ct. App. 2012), she ignores the statement in that very opinion stating that regardless of the legality of such adoptions under Georgia law, parents in E.L.'s position who participated in the adoption are estopped from subjecting them to collateral attack. Pet. 25-26.

III. E.L.'s Argument Based On The Parties' Residency Is Irrelevant And Incorrect.

E.L. asserts that the Alabama Supreme Court's decision "could be upheld on the alternative ground" that V.L. was not a resident of Georgia at the time of the adoption.[7] Resp. 25. As E.L. acknowledges, *id.*, the Alabama Supreme Court did not decide that issue and instead resolved the case on a ground that had nothing to do with residency. Consistent with this Court's admonition that it is "a Court of review, not of first view," *Wellness International Network, Inc. v. Sharif*, 135 S. Ct. 1932, 1949 (2015) (quotation marks omitted), the Court should deny E.L.'s request to add the residency issue as a second question presented.

In any event, E.L.'s argument is meritless. The Alabama Court of Civil Appeals expressly rejected E.L.'s residency argument on two grounds. First, "[a]rguably, because the Georgia court has already decided that the residency requirements were satisfied, the family court was bound by that determination and could not find otherwise." App. 45a. Second, Georgia law prohibits residency-based collateral attacks on

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[7] E.L. repeatedly asserts that the "undisputed record" shows that V.L. was not a Georgia resident. *E.g.*, Resp. 25. Not so. E.L.'s arguments are based on her self-serving, litigation-driven affidavit that was never subject to cross-examination, and V.L. disputes E.L.'s factual assertions. As the Alabama Court of Civil Appeals held, however, the veracity of those factual assertions is irrelevant because even if they were accurate, the adoption would still be entitled to full faith and credit.

adoptions filed over six months after entry of the adoption decree. App. 46a. E.L. ignores the second point altogether; on the first point, she argues that *res judicata* does not apply because the residency issue was not expressly litigated. Resp. 27. Yet this Court has squarely rejected this argument, holding that *res judicata* applies to any litigant who had the *opportunity* to contest an issue—even if she did not actually do so. Pet. 15-16. E.L. had every opportunity to contest the parties' residency in the Georgia Superior Court, but instead supported the adoption; she is precluded from contesting residency now. And even setting these points aside, E.L. cites no authority holding that residency is a jurisdictional, as opposed to merits-based, requirement in an adoption case.

If V.L. prevails in this Court, it is highly doubtful that anything will be left of E.L.'s residency argument for the reasons already stated by the Alabama Court of Civil Appeals. But, consistent with the Court's usual practice, the Court should grant certiorari on the question presented; if the Court reverses, E.L. may present any preserved, alternative arguments on remand.

CONCLUSION

The petition for writ of certiorari should be granted.

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In the
Supreme Court of the United States

V.L.,

PETITIONER,

v

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

RESPONDENTS.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

BRIEF OF THE AMERICAN ACADEMY OF ADOPTION ATTORNEYS AND THE GEORGIA COUNCIL OF ADOPTION LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The American Academy of Adoption Attorneys, Inc. (the "Academy") is an association of attorneys, judges, and law professors in the United States and Canada dedicated to the highest standards of practice in adoption law. The Academy's membership is by invitation only based on demonstrated professional excellence. Its mission is to support the rights of children to live in safe, permanent homes with loving families; to ensure appropriate consideration of the interests of all parties to adoptions; and to facilitate the orderly and legal process of adoption. To fulfill its mission, the Academy engages in legislative and administrative advocacy, develops policy, and provides *pro bono* assistance on adoption issues.

The Academy is committed to improving the lives of children by advocating for the benefits and stability adoption provides. As an organization, the Academy has filed *amicus curiae* briefs in important adoption-related cases, including *Adoptive Couple v. Baby Girl*, 570 U.S. __, 133 S. Ct. 2552 (2013); advised the State Department on implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and

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[1] Pursuant to Sup. Ct. R. 37.2(a), counsel for all parties received notice of *amici*'s intent to file this brief. All parties have consented to the filing of this brief and have lodged blanket consent letters with the Clerk of Court. No counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici*, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

the federal Intercountry Adoption Act of 2000; assisted in drafting and advocated for the passage of state and federal adoption legislation; and advised on the drafting of the Uniform Adoption Act.

This brief was reviewed and approved to be filed by the Academy's Board of Trustees.

The Georgia Council of Adoption Lawyers, Inc. ("GCAL") is a Georgia nonprofit corporation that, among other things, advocates before the Georgia legislature on matters of adoption law and supports the Georgia judicial branch through educational programs and the filing of *amicus* briefs on adoption-law issues.

Membership in GCAL is by invitation only and is limited to members in good standing of the State Bar of Georgia who have demonstrated expertise in adoption law. Fellows in GCAL represent the most experienced members of the Georgia adoption bar.

The filing of this amicus brief was authorized by a vote of GCAL's Board of Directors.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Alabama Supreme Court's decision in this case violates the Full Faith and Credit Clause. U.S. Const., Art. IV, § 1. The court refused to give full faith and credit to an adoption decree issued by a Georgia court that had exclusive authority under Georgia law to issue adoption decrees. App. 19a. Instead, brushing aside Georgia's sovereign interests, the Alabama court concluded that the judgment of adoption—awarded to the biological mother's same-sex partner—was "void" according to its interpretation of Georgia law and, therefore, the Georgia court lacked subject-matter jurisdiction. *Id.* at 22a–24a.

That is not how full faith and credit works. *See* Pet. 16–27. As petitioner explains, the Alabama Supreme Court ignored the presumption in favor of jurisdiction, *id.* at 18–20, impermissibly recast the merits of the adoption decree as a question of jurisdiction, *id.* at 16–18, and contradicted the Georgia court's own finding of authority, *id.* at 24–26.

The Alabama Supreme Court thus imposed its own policy preferences on a question of Georgia adoption law that it had no authority to decide under the Full Faith and Credit Clause. *Amici* are concerned about the Alabama court's complete disregard for the exclusive authority of Georgia courts on matters of Georgia adoption law. Georgia's statute of repose bars any challenge to an adoption after six months, *see* O.C.G.A. § 19-8-18(e), and the Georgia Superior Court's judgment securing the bond between the adoptive mother and the children she

planned for and raised was due respect under basic full-faith-and-credit principles.

The consequences of the Alabama Supreme Court's decision are deeply troubling. Not only does the decision contravene Georgia's decision about how best to protect the bonds between adoptive parents and their children, it also casts doubt on the validity of second-parent adoptions—a widely recognized adoption procedure used to protect the children of unmarried same-sex couples in many states. Such adoptions, which involve the adoption of a child with one living parent by that parent's same-sex partner, have long existed in Georgia, *see Wheeler v. Wheeler*, 642 S.E.2d 103, 104 (Ga. 2007) (Carley, J., dissenting), and the Georgia appellate courts have repeatedly declined to entertain challenges to the validity of second-parent adoptions. *See id.*, at 103–04; *Bates v. Bates*, 730 S.E.2d 482, 486 (Ga. Ct. App. 2012). It offends not just full faith and credit but core principles of federalism to permit another state to contravene the careful policy choices Georgia has made on family law matters within its exclusive sovereignty

Moreover, Georgia is not alone in permitting second-parent adoptions. Before states recognized same-sex marriage, judges in many states issued second-parent adoptions to protect and secure the bonds between children and their same-sex parents under materially similar statutory adoption schemes. *See* Leslie Joan Harris, *Voluntary Acknowledgements of Parentage for Same-Sex Couples*, 20 Am. U.J. Gender, Social Pol. & Law 467, 471–72 (2012). Now if the decision of the Alabama Supreme Court is not

reversed those adoptions—and *any* adoption that an Alabama court finds does not comply with *Alabama's* interpretation of another state's statutory adoption requirements—are vulnerable to attack. The Alabama precedent is as dangerous as it is wrong. This Court should grant the petition to reverse the decision below.

ARGUMENT

I. The Alabama Supreme Court's Decision Usurps Georgia's Sovereign Authority To Issue Adoption Decrees.

The Superior Court of Fulton County, Georgia, had "exclusive jurisdiction in all matters of adoption." O.C.G.A. §19-8-2(a). As that court found, it had full authority under Georgia law to issue an adoption to V.L. *See* App. 50a. Yet the Alabama Supreme Court impermissibly refused to respect that court's determination of its own authority and the validity of the adoption it ordered. *See Coe v. Coe*, 334 U.S. 378, 384 (1948); *see also* Restatement (First) of Conflict of Laws § 143 (1934). The Alabama Supreme Court's decision was wrong. It undermines the authority of Georgia courts to interpret Georgia law—especially on matters of family law. *Cf. In re Burrus*, 136 U.S. 586, 593–94 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.").

In Georgia, as in most states, a court's "ultimate concern" in adoption proceedings is to protect and further the best interests of the child. *See Johnson v. Eidson*, 221 S.E.2d 813, 816-17 (Ga. 1976); *Owens v.*

Griggs, 261 S.E.2d 463, 464 (Ga. 1979). By focusing on children's welfare, courts "ensure that children are treated fairly as individuals," *Stills v. Johnson*, 533 S.E.2d 695, 700 (Ga. 2000), taking into account their "interest in a safe, secure environment that promotes [their] physical, mental, and emotional development," *Clark v. Wade*, 273 Ga. 587 (2001). The Georgia Superior Court judge who presided over the petition for adoption was in the best position to determine his authority to grant the adoption—including the existence of personal and subject-matter jurisdiction—and to decide that the adoption was in the best interests of the children who appeared before him. *See* O.C.G.A. § 19-8-18(b).

Under the Full Faith and Credit Clause, that judgment by the Georgia Superior Court was entitled to the Alabama Supreme Court's respect and should have been enforced. For judgments, "the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). A state must honor the judgment of a sister state, even if it disagrees with it. *Id.*

Indeed, reinforcing the finality of the Georgia adoption decree, Georgia law prohibits *any* court from entertaining "any judicial challenge" to the adoption decree, as the Alabama courts did here. O.C.G.A. § 19-8-18(e). In particular, Georgia's statute of repose bars all challenges to adoption decrees—even *jurisdictional* ones—more than six months after the adoption issues. *See Williams v. Williams*, 717 S.E.2d 553, 554 (Ga. Ct. App. 2011). No Georgia decision holds that bar inapplicable merely because it is alleged the adoption did not

comport with Georgia law and should not have been issued.

Nevertheless, more than eight years after the Georgia court entered its decree, the Alabama court refused to recognize the adoption on grounds that no Georgia court could have entertained: that the issuing court lacked subject-matter jurisdiction.

The Alabama Supreme Court's decision impermissibly rejects the Georgia court's conclusion that it had the authority to grant a decree of adoption, and it tears apart family bonds in the process. Alabama should not be free to substitute its own judgment about the validity of a Georgia adoption years later—especially at the invitation of a biological mother who simply changed her mind about the wisdom of the adoption she asked the court to grant. *See Bates*, 730 S.E.2d at 486 n.5.

To be sure, a state need not give full faith and credit to a judgment issued by a sister state court that lacked jurisdiction. *Baker*, 522 U.S. at 233. But that narrow exception must be protected from abuse—or else the Full Faith and Credit Clause would be meaningless with policy disagreements easily recast as jurisdictional defects. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 829 (1995) ("The Constitution nullifies sophisticated as well as simple-minded modes of infringing on constitutional protections.") (internal quotation marks omitted). That is exactly what happened here. The Alabama Supreme Court injected its own policy preferences under the guise of identifying an alleged jurisdictional defect.

The Alabama Supreme Court's subterfuge depends on treating the purest of *dicta*—a statement by a single Justice of the Georgia Supreme Court in a dissent from the denial of *certiorari* review—as controlling Georgia law. *See Wheeler*, 642 S.E.2d at 104 (Carley, J., dissenting). In *Wheeler*, the Georgia Supreme Court refused to consider a challenge to an adoption materially identical to the one the Superior Court of Fulton County granted to V.L. *Id.* at 103. In his dissent, Justice Carley explained that, in his view. the adoption was invalid under Georgia law because the same-sex partner of the biological mother could not be (at the time) a spouse under Georgia law, and, therefore, she purportedly had no right to seek an adoption (without terminating the existing parent's rights). *See id.* at 104. Based on this *dicta*, the Alabama Supreme Court "assume[d] that a Georgia court would make the same conclusion [that Justice Carley reached], and by extension, *would* permit a challenge on jurisdictional grounds to an adoption decree that did not fully comply with" Georgia's adoption code. App. 17a. But this assumption was wrong. Even though Justice Carley concluded that the adoption did not appear to comport with Georgia law, he described it as a "nonamendable defect"—a problem with the *merits* of the adoption, not a problem with the jurisdiction of the issuing court. *Id.* (quoting O.C.G.A. § 9-11-60(d)(3)).

It appears that in refusing to respect the Georgia court's judgment, some members of the Alabama Supreme Court substituted their own policy preferences for the full faith and credit that the Constitution requires. In his separate writing,

Justice Parker openly questioned the wisdom of allowing same-sex couples to adopt. *See* App. 31a (describing heterosexual families as the "optimal family structure" and citing with favor a decision upholding Florida's categorical ban on "adoption by any homosexual person). Likewise, Chief Justice Moore has publicly denounced gays and lesbians, stating that "homosexual conduct . . . creates a strong presumption of unfitness" to parent. *Ex Parte H.H.*, 830 So. 2d 21, 26 (Ala. 2002) (Moore, C.J., concurring).

But these types of policy considerations have no place in determining whether to accord full faith and credit to another state's judgments. *See Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). "The Full Faith and Credit Clause is not to be applied, accordion-like, to accommodate [a court's] personal predilections." *Estin v. Estin*, 334 U.S. 541, 545–46 (1948). Moreover, animus and moral opprobrium also should have no place in a full-faith-and-credit analysis. *Cf. Lawrence v. Texas*, 539 U.S. 558, 571 (2003) ("Our obligation is to define the liberty of all, not to mandate our own moral code." (internal quotation marks and citations omitted)); *Romer v. Evans*, 517 U.S. 620, 632 (1996) (condemning legislation that was "inexplicable by anything but animus toward the class it affects").

In any event, whatever the rationale of the Alabama Supreme Court, it flies in the face of the Georgia Superior Court's judgment that this adoption was in the best interests of the children. App. 50a. It also disrespects that court's conclusion that it had exclusive authority—subject-matter jurisdiction—

under Georgia law to issue the decree. *Id.* Even if the Georgia court was wrong about Georgia law, Alabama was obligated under the Full Faith and Credit Clause to respect its judgment.

II. The Alabama Supreme Court's Decision Threatens The Validity Of Thousands Of Second-Parent Adoptions Issued By Other States.

The Full Faith and Credit Clause protects interests of finality that are fundamental to our system of justice. *See Baker*, 522 U.S. at 232. Those finality interests are paramount where, as here, states have made different policy choices on matters within their sovereignty. Precisely because there is "no roving 'public policy exception' to the full faith and credit due *judgments*," *id.* at 233, no state should be free to interfere with the policy decisions of a sister state, even if (and especially when) those decisions may be controversial. *Amici* are concerned about the effect of the Alabama Supreme Court's decision on the recognition afforded second-parent adoptions more generally, as judges in many states have granted second-parent adoptions under similar state statutory adoption schemes.

Across the country, "hundreds of thousands of children are presently being raised by [same-sex] couples." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015). Many of those children are being raised by couples who only recently secured marriage rights. Before that time, tens of thousands of same-sex couples turned to second-parent adoptions as a means to achieve the "safeguards" and "recognition,

stability, and predictability" needed to protect their families. *Id.*

Before *Obergefell*, a small handful of states had enacted statutes that allow a same-sex partner to adopt his or her partner's children.[2] In a larger number of states, including in the District of Columbia, Idaho, Illinois, Indiana, Maine, Massachusetts, New Jersey, New York, Oklahoma, and Pennsylvania, state appellate courts have expressly approved second-parent adoptions by flexibly interpreting state adoption codes.[3]

In states like Alaska, Florida, Georgia, Louisiana, Maryland, Texas, and West Virginia, trial courts have also issued second-parent adoptions based on a flexible reading of statutory requirements

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[2] Cal. Fam. Code §§ 8616.5, 9000 (West Supp. 2010) (allowing registered domestic partners to adopt without terminating the legal status of the biological parent by post-adoption contract); Colo. Rev. Stat. Ann. §§ 19-5-203(1), 19-5-208(5), 19-5-210(1.5); Conn. Gen. Stat. § 45a-724(a)(3) (West 2009); Vt. Stat. Ann. Tit. 15A, § 1-102(b) (2002).

[3] *In re M.M.D.*, 662 A.2d 837, 865-66 (D.C. 1995); *In re Adoption of Doe*, No. 41463, 2014 WL 527144 (Idaho Feb. 10, 2014); *In re Petition of K.M.*, 653 N.E.2d 888, 899 (Ill. App. Ct. 1995); *In re Adoption of Infant K.S.P.*, 804 N.E.2d 1253, 1260 (Ind. Ct. App. 2004); *In re Adoption of M.M.G.C.*, 785 N.E.2d 267, 270 (Ind. Ct. App. 2003); *Adoption of M.A.*, 2007 ME 123 (Me. 2007); *In re Adoption of Tammy*, 619 N.E.2d 315, 319 (Mass. 1993); *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535, 540-41 (N.J. Super. Ct. App. Div. 1995); *In re Jacob*, 660 N.E.2d 397, 405 (N.Y. 1995); *Eldredge v. Taylor*, 339 P.3d 888, 893 (Okla. 2014); *In re Adoption of R.B.F.*, 803 A.2d 1195, 1202 (Pa. 2002).

(but without clear guidance from appellate courts).[4] Those states, like Georgia, *see Bates*, 730 S.E.2d at 342, have also refused collateral attacks to second-parent adoptions launched years after the fact.

In *Goodson v. Castellanos*, 214 S.W.3d 741, 747–48 (Tex. Civ. App. 2007), for example, the Texas Court of Appeals rejected an argument materially identical to the argument E.L. successfully made to the Alabama Supreme Court—that an adoption by a legal mother's same-sex partner was void for lack of subject-matter jurisdiction because the adoption purportedly did not comport with the statutory scheme. The Texas court explained that even if the trial court "erred in issuing the adoption decree," the error would not deprive the court "of jurisdiction over the adoption." *Id.* at 748. Because the defect was not one of subject-matter jurisdiction, the legal mother could not collaterally attack the decree. *Id.* at 748–49.

The Alabama Supreme Court's decision is unprecedented in refusing to recognize a second-parent adoption issued by a sister state—especially when that sister state would refuse a similar challenge within its own borders. *See* Pet. 31. It opens the door to devastating consequences for any adoptive family crossing the Alabama state line, as Alabama courts, government, hospitals, and schools are now free to disregard an adoption issued by a

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[4] *See generally* Nat'l Ctr. For Lesbian Rights, *Adoption by LGBT Parents*, at 1–2 (2015), http://www.nclrights.org/wp-content/uploads/2013/07/2PA_state_list.pdf (last visited Dec. 17, 2015).

state like Georgia or Texas or Louisiana, where the validity of a second-parent adoption may not be free from doubt under state law.

The decision is a stark reminder of the legal fragility of family bonds outside the protective institution of marriage. That is a harm this Court sought to ameliorate last Term by recognizing that same-sex couples have a constitutional right to marry. The Court should grant the petition to ensure that all families formed through adoption can be secure in knowing that the judicial order solidifying those bonds will be recognized throughout the nation.

CONCLUSION

For these reasons, the petition for certiorari should be granted.

Respectfully submitted,

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V.L., PETITIONER,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF AMICI CURIAE CONFLICT OF LAWS PROFESSORS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are scholars who teach and write in the fields of conflict of laws, the law of judgments, and interstate family law disputes:

- Lea Brilmayer, Howard M. Holtzmann Professor of International Law at Yale Law School;

[1] Pursuant to Rule 37.6, amici affirm that no counsel for any party authored this brief in whole or in part, and that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or their counsel made a monetary contribution to its preparation or submission. Counsel for amici notified counsel for Petitioner and Respondent of their intent to file an amicus brief. Counsel for Petitioner and Respondent each filed with the Clerk, more than ten days before the filing of this brief, letters granting blanket consent to the filing of amicus briefs.

- Stephen B. Burbank, David Berger Professor for the Administration of Justice at the University of Pennsylvania Law School;
- Joan Heifetz Hollinger, John & Elizabeth Boalt Lecturer-in-Residence, Emerita at the University of California Berkeley School of Law
- Courtney G. Joslin, Professor of Law at the University of California Davis School of Law
- Herma Hill Kay, Barbara Nachtrieb Armstrong Professor of Law at the University of California Berkeley School of Law;
- Kermit Roosevelt III, Professor of Law at the University of Pennsylvania Law School;
- Joseph William Singer, Bussey Professor of Law at Harvard Law School;
- Tobias Barrington Wolff, Professor of Law at the University of Pennsylvania Law School.[2]

As scholars specializing in the conflict of laws, the law of judgments and full faith and credit, amici are well positioned to advise the Court on the importance of this petition to the Court's full faith and credit jurisprudence and the potential impact that denying certiorari would have on the finality of judgments and the assurance of full faith and credit between the states.

INTRODUCTION AND SUMMARY

This Court plays an exclusive and indispensable role in preserving interstate comity through interpretation

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[2] Institutional affiliations are provided for identification purposes only.

and enforcement of the Full Faith and Credit Clause. When a state supreme court misapplies this Court's precedents and misconstrues the laws of a sister state in order to avoid giving effect to a judgment with which it disagrees, as the Supreme Court of Alabama has done in this case, no other court has jurisdiction to provide relief. Certiorari is necessary to remedy these constitutional and statutory violations and to reaffirm that the states' obligation to give full faith and credit extends even to sister-state judgments that address contentious matters of social policy.

This case is a particularly appropriate vehicle for the Court to perform its role of safeguarding the Full Faith and Credit Clause because of the significant stakes involved for the petitioner and many other families. V.L. and E.L sought protection under Georgia's judicial system to secure V.L.'s status as a second parent and to protect the role V.L. had played in the lives of their children for many years. Pet. App. 2a. To formalize their parenting arrangement, they secured a judgment from the Superior Court of Georgia recognizing that V.L.'s status as an equal second parent was in the best interests of the children. *Id.* at 43a. The Georgia court issued the adoption order in 2007 after finding that V.L. had complied with all relevant and applicable formalities. Pet. 5-6. V.L. relied on the finality of that judgment when she sought visitation rights after her seventeen-year relationship with E.L. ended in 2011. Pet App. 4a. The Alabama Family Court and the Alabama Civil Court of Appeals properly gave effect to the judgment when granting V.L.'s request.

The Supreme Court of Alabama, however, has refused. That court permitted E.L. to launch a collateral

attack on the Georgia adoption decree and held that V.L.'s legal status as a parent to her children—confirmed by the Georgia judgment—could be wholly disregarded. Pet. App. 18a-24a. To do so, the Supreme Court of Alabama misapplied the laws of Georgia to transform a disagreement over the merits of the Georgia judgment into a purported infirmity in subject matter jurisdiction. *Ibid.* First, the Alabama court disregarded Georgia's six-month statutory bar on any judicial challenge to adoption decrees, a provision that is designed to encourage parent/child bonds following adoption by protecting the decree against challenge long thereafter. To reach this result, the Alabama court created a new limitation on the six-month period of repose that no Georgia court has ever recognized. *Id.* at 12a-17a (citing Ga. Code Ann. § 19-8-18(b) & (e)). Second, the Alabama court improperly attacked the judgment on a merits question, elevating its own unsupported view concerning the availability of second-parent adoption in Georgia above the ruling of the Georgia Superior Court and improperly labeling that disagreement a "jurisdictional" infirmity. *Id.* at 18a-24a. Full faith and credit does not permit such tactics.

Should this petition for certiorari be denied, Alabama's evasive tactics would serve as a template for other state courts to resist enforcement of sister state judgments on contentious family law issues. There have always been significant differences between the states on questions of family law. Under our Constitution, legal and policy differences do not permit one state to refuse to recognize a valid sister-state judgment. The template provided by Alabama threatens to undermine the comity that full faith and credit demands.

Amici emphasize three core reasons this Court should grant certiorari. First, Alabama violated settled precedent when it reframed the merits question underlying the Georgia judgment as a question of subject-matter jurisdiction and used that device as grounds for a collateral attack. This Court squarely rejected that device in *Durfee* v. *Duke*, 375 U.S. 106 (1963), when it held that states must give effect to the judgments of sister states even when the disputed merits question wholly overlaps with a question of subject-matter jurisdiction. This Court should reaffirm that the Full Faith and Credit Clause still forbids this device.

Second, Alabama violated a command of Congress when it misapplied Georgia law—disregarding settled authorities and embracing a lone dissent from a justice of the Supreme Court of Georgia—in order to evade the requirement of full faith and credit. Congress has instructed states to give "the same" effect to a sister state judgment as the judgment would have in the rendering state. 28 U.S.C. 1738. Alabama refused to apply clear Georgia statutory and appellate authority that specifies the binding effect of adoption decrees when it declared Georgia's second-parent adoption judgments categorically unenforceable in Alabama. This Court has not hesitated to find a violation of full faith and credit in response to such malfeasance in the past, and it should not hesitate here.

Third, this Court is the only forum that is able to correct this type of full faith and credit violation. No other federal court has jurisdiction to remedy one state's refusal to give effect to another state's judgment, and the domestic relations exception to original federal jurisdiction would prevent parties from remov-

ing to federal court in the types of dispute most likely to place the validity of an adoption decree in issue. This Court's role in policing the actions of state supreme courts is singular and indispensable. It should grant the petition to ensure that the Alabama court's decision is not permitted to erode the values that the Full Faith and Credit Clause is designed to protect.

I. THE SUPREME COURT OF ALABAMA'S COLLATERAL ATTACK ON GEORGIA'S ADOPTION DECREE FLOUTS THIS COURT'S PRECEDENT

When a judgment is valid and entitled to enforcement in the courts of the state that issued it, full faith and credit prohibits other states from undertaking any inquiry into "the merits of the [judgment], the logic or consistency of the decision, or the validity of the legal principles on which [it] is based." *Milliken* v. *Meyer*, 311 U.S. 457, 462 (1940). As the Petitioners have demonstrated, the Supreme Court of Alabama was incorrect when it classified the alleged error in the Georgia adoption order as a jurisdictional issue rather than a dispute over the merits and flatly wrong when it held that the Georgia judgment would not be enforced in Georgia courts. Pet. 16-23.

Even in situations where a particular dispute entangles questions of subject-matter jurisdiction with merits issues, this Court's precedent makes clear that a fully-litigated decision on the merits is entitled to full faith and credit. This principle of finality is particularly important in the family law context, where states have a vital interest in protecting established social relationships. Allowing the decision below to stand will encourage opportunistic behavior, impelling litigants and courts to resist the enforcement of out-of-state judg-

ments that embody domestic relations policies different from their own. This Court should grant certiorari to prevent such attempts to cloak merits disagreements as jurisdictional infirmities.

A. This Court's Decision In *Durfee* v. *Duke* Forbids State Courts From Disregarding A Judgment Because Of Disagreement Over A Fully Litigated Merits Issue, Even When The Merits Substantially Overlap The Question Of Subject-Matter Jurisdiction

When a state court issues a final judgment that resolves a fully litigated issue, the courts of a sister state may not disregard that judgment based on a disagreement over the merits. This rule applies even when merits issues substantially overlap the question of the rendering court's subject-matter jurisdiction. In *Durfee* v. *Duke*—a case where the merits question and the subject-matter jurisdiction question were essentially identical—this Court held that "[p]ublic policy * * * dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties." 375 U.S. 106, 111 (1963) (quoting *Baldwin* v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525-526 (1931)). Here, the Supreme Court of Alabama has attempted to transform a disagreement over the merits into a jurisdictional basis for disregarding a Georgia judgment. *Durfee* forecloses this device.

The decision in *Durfee* arose from a dispute over "bottom land situated on the Missouri River" at the border of Nebraska and Missouri. 375 U.S. at 107. A Missouri resident claimed ownership of the land based

on a Swamp Land Patent issued by that state, and Nebraska residents claimed ownership based on a sheriff's deed issued by a Nebraska county following a tax foreclosure. See *Duke* v. *Durfee*, 308 F.2d 209, 210 (8th Cir. 1962), rev'd, 375 U.S. 106 (1963). The validity of each claim turned on whether the land was located in Missouri or Nebraska, a matter that was in dispute because of changes in the course of the river over time. 375 U.S. at 107-108. The question of subject-matter jurisdiction turned on the same issue. *Ibid.* Since only the state where the land was located had jurisdiction to issue a judgment effectuating a change in ownership, see *M'Elmoyle* v. *Cohen*, 38 U.S. 312, 325 (1839), the location of the land necessarily determined which court system, Nebraska or Missouri, had jurisdiction to quiet title. A Nebraska state court awarded the land to the Nebraska residents. *Durfee*, 375 U.S. at 108. The disappointed Missouri residents then brought suit in Missouri state court to seek a different result, asking that the Nebraska judgment be disregarded.[3] *Ibid.*

On appeal, this Court held that the Nebraska judgment must be given effect under the Full Faith and Credit Clause, even though the merits question wholly overlapped the issue of subject-matter jurisdiction. *Durfee*, 375 U.S. at 115-116. While a defect in subject-matter jurisdiction that was never presented in an initial proceeding might serve as a basis for denying effect to a judgment, a fully litigated merits determination cannot be revisited by reframing it as a question of subject-matter jurisdiction. See *id.* at 111. Where the merits issue is fully joined and resolved in the first pro-

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[3] The case was removed to federal district court in Missouri under diversity jurisdiction. See *Durfee*, 375 U.S. at 108.

ceeding, the fact that it overlaps the question of subject-matter jurisdiction is of no moment. See *id.* at 111-112.

The Supreme Court of Alabama ignored the rule from *Durfee*. V.L. and E.L. took advantage of their full and fair opportunity to present the merits of V.L.'s adoption petition before the Georgia Superior Court. That court expressly found that V.L.'s adoption petition was in compliance with "all relevant and applicable formalities * * * in accordance with the laws of the State of Georgia." Pet. 6 (quoting Pet. App. 50a). The judgment granting the adoption, issued from a fully presented petition, is final and protected from collateral challenge. As this Court explained in *Durfee*, the obligation to afford full faith and credit applies in "every case" where a litigant has "voluntarily appear[ed], present[ed] his case and [has been] fully heard." 375 U.S. at 111-112. "One trial of an issue is enough," whether that issue is "jurisdiction of the subject matter [or] of the parties." *Id.* at 113 (quoting *Treinies* v. *Sunshine Mining Co.*, 308 U.S. 66, 78 (1939)).

This constitutional policy demanding that "there * * * be a place to end" litigation on jurisdictional questions serves to protect the interests of individual litigants and the integrity of our interstate civil justice system. 375 U.S. at 113 (quoting *Stoll* v. *Gottlieb*, 305 U.S. 165, 172 (1938)). "After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined." *Id.* at 114 (quoting *Stoll*, 305 U.S. at 172). The retrial burdens the parties and undermines the stability of final judgments without

providing any systemic benefit, for "[t]here is no reason to expect that the second decision will be more satisfactory than the first." *Ibid.* (quoting *Stoll*, 305 U.S. at 172).

B. This Court's Precedent In The Family Law Context Confirms That Jurisdictional Issues Are Presumed Decided When A Proceeding Is Fully Litigated

The principle set forth in *Durfee* applies with equal force in the family law setting, a proposition that this Court stated most directly in *Sherrer* v. *Sherrer*, 334 U.S. 343 (1948). *Sherrer* involved an attempt by one spouse to disavow a Florida divorce decree on the strength of a claim that the rendering court lacked jurisdiction. *Id.* at 345-348. The decree issued in a proceeding in which that spouse had entered an appearance, filed an answer, and had a full and fair opportunity to contest the *bona fides* of the other spouse's residence in Florida (the point on which subject-matter jurisdiction depended). *Id.* at 348-349. This Court rejected that attempt, explaining that "the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister State where there has been participation by the defendant in the divorce proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues, and where the decree is not susceptible to such collateral attack in the courts of the State which rendered the decree." *Id.* at 351-352. Because these requirements were all met, the spouse was bound by the resulting decree and could not attack it collaterally. *Id.* at 352. See also *id.* at 352-353 (disavowing an earlier statement to the contrary in

Andrews v. *Andrews*, 188 U.S. 14 (1903), in light of "the considerable modern development of the law with respect to finality of jurisdictional findings").

In so holding, this Court rejected the argument that "the importance of a State's power to determine the incidents of basic social relationships into which its domiciliaries enter" might justify a less assiduous application of full faith and credit in the family law setting. *Sherrer*, 334 U.S. at 354. To the contrary, the fact "[t]hat vital interests are involved in divorce litigation indicates to us that it is a matter of greater rather than lesser importance that there should be a place to end such litigation." *Id.* at 356. See also *Davis* v. *Davis*, 305 U.S. 32, 43 (1938) (finding spouse who appeared and participated in Virginia divorce proceeding had "submitted herself to the jurisdiction of the Virginia court," was "bound by its determination that it had jurisdiction of the subject matter and of the parties," and was forbidden by the Full Faith and Credit Clause from mounting a collateral attack on jurisdictional grounds).

Many state courts have acknowledged the obligation to recognize orders of adoption issued by sister-state courts, even when the adoption in question would be legally impossible under local law. In one prominent early example, *In re Morris' Estate*, 133 P.2d 452 (Cal Ct. App. 1943), the California Court of Appeal gave effect to an adult adoption decree from Rhode Island when administering an estate. A 92-year-old man had adopted his niece, then 61, while both were domiciled in Rhode Island. The niece then moved to California where she passed away, predeceasing her adoptive father. The question arose whether the adoptive father would have the status of "father" or "uncle" in the pro-

bate of the estate. At the time, adult adoption was "legally impossible" in California. *Id.* at 454. Nonetheless, the California court concluded that its local policy must give way to full faith and credit and the particular imperative to enforce that obligation strictly in matters of personal status arising under family law. *Id.* at 455-456.

State courts around the country have reached similar conclusions in disputes involving the contested category of adult adoption. As the Supreme Court of New Mexico explained, this is because adoption is a "relational status" that, once created, gives rise to "rights, duties, and obligations * * * of great interest to the state." *Delaney* v. *First Nat'l Bank*, 386 P.2d 711, 715 (N.M. 1963). Like "any other" relational status that is "created by acts of the parties plus the effect of law," adoption "cannot be terminated by the sole will of the parties." *Ibid.* Accordingly, courts are required to treat adoption "in the same way" as "other types of domestic status." *Ibid.* (finding the court was "constrained to give credence" to Colorado adult adoption decree that could not have been granted under local law). See also, *e.g.*, *In re Trust Created by Nixon*, 763 N.W.2d 404, 408-410 (Neb. 2009) (holding that Nebraska must give full faith and credit to California judgment effecting adoption of 50-year-old man by his 64-year-old first cousin notwithstanding that Nebraska statutes did not permit such adoptions); *Russell* v. *Bridgens*, 647 N.W.2d 56, 59-60 (2002) (holding that Nebraska courts must recognize Pennsylvania second-parent adoption even if the issuance of the adoption was improper under Pennsylvania law); *id.* at 61-62 (Gerrard, J., concurring) (explaining that (1) availability of second-parent adop-

tion in Pennsylvania is not a jurisdictional question and (2) "even if the Pennsylvania Court of Common Pleas erred in concluding that it had subject matter jurisdiction, under Pennsylvania law, the Court of Common Pleas' determination that all jurisdictional requirements had been satisfied is res judicata as to the parties to the adoption").

The Supreme Court of Alabama has flouted these principles. It has improperly conflated the merits of a Georgia second-parent adoption with the subject-matter jurisdiction of the rendering court in order to deny effect to the resulting judgment—the device this Court rejected in *Durfee*. It has asserted that a court should strictly construe a judgment of adoption and apply a presumption against enforcement, Pet. App. 23a-24a, disregarding this Court's admonition that the "importance of a State's power to determine the incidents of basic social relationships" makes it "a matter of greater rather than lesser importance that there should be a place to end such litigation." *Sherrer*, 334 U.S. at 354, 356. And it has issued a ruling that will authorize Alabama courts to categorically disregard second-parent adoption judgments from Georgia (and perhaps other states as well). This approach conflicts with the full faith and credit teachings of this Court and has been squarely rejected by state courts facing other categorical differences of opinion on the types of adoption that should be permitted.

This Court should grant the petition to eliminate any doubt that its holdings in *Durfee* and *Sherrer* apply to a disagreement among states over adoption policy. Failing to do so will invite other states to evade the demands of Article IV at a time of heightened contro-

versy concerning domestic relations. The resulting erosion of this Court's settled principles of full faith and credit will undermine interstate comity in contexts beyond the present controversy over second-parent adoption.

II. This Court Has Repeatedly Held That A State Cannot Deny Full Faith And Credit To The Judgment Of A Sister State Through A Misapplication Of That State's Laws

The Supreme Court of Alabama's decision also merits review because it brazenly misconstrues a sister state's law to evade the requirements of full faith and credit. The Full Faith and Credit Act forecloses this tactic. When the first Congress enacted implementing legislation for the Full Faith and Credit Clause in the Judiciary Act of 1790, it set a uniform federal policy requiring that judgments receive "the same full faith and credit in every court * * * as they have by law or usage in the courts of such State * * * from which they are taken." 28 U.S.C. 1738. When a state court denies effect to a sister-state judgment by misapplying the law of that state, it fails to accord "the same full faith and credit" that Congress has required. This Court has repeatedly found violations of full faith and credit in cases where state courts have misconstrued a sister state's law to avoid giving effect to a judgment from that state.

A line of cases involving stockholder liability in Minnesota illustrates the principle. In the late nineteenth and early twentieth centuries, Minnesota enacted provisions in its constitution and laws that permitted creditors to recover directly against a corporation's stockholders for liabilities and debts that could not be satisfied fully from corporate assets. Under these pro-

visions, judgments against a corporation could bind individual stockholders if certain conditions were met. This Court upheld the constitutionality of the procedure. See, *e.g.*, *Bernheimer* v. *Converse*, 206 U.S. 516 (1907). Nonetheless, when creditors sought to enforce Minnesota-issued judgments on stockholders domiciled in other states, some state courts resisted.

In *Chandler* v. *Peketz*, 297 U.S. 609 (1936), and *Marin* v. *Augedahl*, 247 U.S. 142 (1918), the courts of Colorado and North Dakota, respectively, relied on ungenerous interpretations of Minnesota law to conclude that judgments issued pursuant to that law were not binding. In *Chandler*, the Supreme Court of Colorado found that a federal district court in Minnesota had failed to schedule a hearing in a timely manner and had failed to specify in enough detail the time in which stockholders must make required payments. It declined to enforce the resulting judgment against a Colorado stockholder, concluding that these supposed infirmities were "jurisdictional" under Minnesota law and hence that it need give the judgment no effect. *Chandler*, 297 U.S. at 611-612. In *Marin*, the North Dakota Supreme Court concluded that a corporation fell into a category that exempted it from the direct-liability provisions altogether and that the Minnesota court's failure to recognize this fact in the initial proceeding was a "jurisdictional" error that rendered the judgment unenforceable. *Marin*, 247 U.S. at 146-147.

This Court rejected these interpretations of Minnesota law and found that full faith and credit required enforcement of both judgments. In *Chandler*, the Court explained its "opinion that neither of these objections" regarding hearing times and payment schedules

"go to the jurisdiction of the District Court in Minnesota in making the assessment" and held that "[e]rrors or procedural irregularities, if any, were subject to correction by the court itself or upon appeal, but afforded no warrant for collateral attack upon the order." 297 U.S. at 612. The Court afforded no deference to Colorado's contrary conclusions about the proper characterization of the judgment under Minnesota law.[4]

In *Marin*, the Court found that North Dakota's disagreement with Minnesota amounted to nothing more than a statement "that the court erred in ruling on a matter of substantive law" that did not "purport to deal

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[4] *Chandler* involved the enforcement of a federal judgment and so did not implicate full faith and credit directly, but the Court relied on *Fauntleroy* v. *Lum* in rejecting Colorado's misreading of Minnesota law and holding that the original judgment was binding. 297 U.S. at 612 (citing, *inter alia*, *Fauntleroy* v. *Lum*, 210 U.S. 230, 234 (1908)). At the time *Chandler* was decided, the governing law on the binding effect of federal court judgments in state courts came from this Court's ruling in *Dupasseur* v. *Rocherau* where the Court had said:

> If by the laws of the State a judgment like that rendered by the Circuit Court would have had a binding effect as against Rochereau, if it had been rendered in a State court, then it should have the same effect, being rendered by the Circuit Court. If such effect is not conceded to it, but is refused, then due validity and effect are not given to it, and a case is made for the interposition of the power of reversal conferred upon this court.

88 U.S. (21 Wall.) 130, 135 (1875). This Court has since made clear that federal judgments are binding in state courts as a matter of federal common law and that federal diversity judgments ordinarily have the same preclusive effect as would a judgment rendered by the courts of the local state. See *Semtek Int'l Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001).

with the jurisdiction of courts—their power to hear and determine—but only to prescribe in a general way the relative rights of stockholders and creditors." Such questions go "to the merits rather than to the jurisdiction" of those courts. *Marin*, 247 U.S. at 147. Once again, this Court gave no deference to the conclusion of the Supreme Court of North Dakota that the error was "jurisdictional" under Minnesota law, relying instead on its own assessment that the courts of Minnesota "treat the question whether a particular corporation belongs to one class or another as a matter the decision of which in a suit against the corporation is binding on the stockholders in subsequent litigation with the latter." *Ibid.*

Consistent with these cases, in recent years this Court has repeatedly rejected attempts to characterize statutory requirements as jurisdictional. See, *e.g.*, *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 88-93 (1998); *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 514-515 (2006). Alabama should not be permitted to evade the demands of full faith and credit by the simple expedient of labeling a Georgia statutory requirement "jurisdictional."

As Petitioner explains in detail, the decision of the Supreme Court of Alabama contradicts an explicit statute concerning the binding effect of Georgia adoption decrees along with established appellate authority making clear that the propriety of an adoption decree in Georgia is a merits question that falls within the subject-matter jurisdiction of the Georgia Superior Court and is not subject to collateral challenge. Pet. 16-20. *Cf. Sun Oil Co.* v. *Wortman*, 486 U.S. 717, 730-731 (1988) (even in the absence of a final judgment, a state

violates full faith and credit when it adopts a construction of another state's law that "contradict[s] law of the other State that is clearly established and that has been brought to the court's attention"). The refusal of the Alabama court to recognize these authorities violates the federal command that Alabama give the "same effect" to a Georgia adoption decree as the decree would have in Georgia. 28 U.S.C. 1738. Congress has given this Court both the power and the obligation to enforce that command.

III. This Court Plays An Indispensable Role In Correcting Violations Of The Full Faith And Credit Clause By State Courts

When a state supreme court refuses to recognize the valid judgment of a sister state, as the Supreme Court of Alabama has done here, it places a strain on the interstate judicial system, challenging the authority of the rendering courts and undermining the ability of the parties to structure their lives. The Full Faith and Credit Clause was designed to avoid these consequences, and this Court plays a unique and indispensable role in preserving the interstate comity that the Clause requires.

The scope of the problem that Alabama has created is large, and no other federal court is available to provide a remedy. If the decision below is permitted to stand, every second-parent adoption decree issued in Georgia (and perhaps other states as well) will be categorically disregarded in the courts of Alabama, which will produce new judgments declaring those decrees unenforceable. Under the *Rooker-Feldman* doctrine, federal district courts will have no power to grant relief from such erroneous judgments. See *Exxon-Mobil*

Corp. v. *Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). District courts exercise original jurisdiction, and a request for relief from an erroneous judgment is appellate in character. "[C]ases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments" thus fall outside the power of district courts altogether. *Ibid.*

Nor is it possible for a party in Alabama to remove a case to federal court before a damaging judgment issues. This Court has interpreted federal jurisdictional statutes to exempt those family law and probate proceedings in which the validity of an adoption is typically placed in issue. "[T]he domestic relations exception, as articulated by this Court since [*Barber* v. *Barber*, 62 U.S. 582 (1858)], divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt* v. *Richards*, 504 U.S. 689, 703 (1992) (referring to diversity jurisdiction). See also *Marshall* v. *Marshall*, 547 U.S. 293, 308 (2006) (confirming probate exception to federal diversity jurisdiction announced in *Markham* v. *Allen*, 326 U.S. 490 (1946)); *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 13 (2004) (applying domestic relations exception to federal question case in which federal constitutional claim might turn on determination of parental status and disputed question of custody), abrogated on other grounds by *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014).

Only this Court has the power to remedy the harm to vulnerable families and the offense to interstate com-

ity that the decision of the Supreme Court of Alabama threatens to impose. It should do so here.

CONCLUSION

This is an important case. The ruling of the Supreme Court of Alabama purports to render an entire class of adoption decrees categorically unenforceable in Alabama state courts. If left unchecked, the decision below will destabilize families and erode the comity between states that the Full Faith and Credit Clause and its implementing legislation were created to preserve. Only this Court has the power to enforce the requirements of the Constitution and the command of Congress. *Amici* urge this Court to grant the petition lest other states follow Alabama's lead.

Respectfully submitted,

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IN THE

Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the constitutional guarantees of the Full Faith and Credit Clause are respected, in accordance with constitutional text, history, and values, and accordingly has an interest in this case.

SUMMARY OF ARGUMENT

The Petition for a Writ of Certiorari in this case presents an important question: whether a state court may, consistent with the Full Faith and Credit Clause, refuse to recognize an adoption judgment previously issued by a sister state based on the forum court's *de novo* determination that the issuing state erred in applying its own state adoption law. In this case, the Alabama Supreme Court refused to grant full faith and credit to a Georgia judgment of adoption issued eight years earlier, thereby depriving Petitioner V.L. of parental rights over children she had

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[1] Counsel for all parties received notice at least 10 days prior to the due date of *amicus*'s intention to file this brief; all parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

raised since they were born and depriving those children of one of their parents. *See* Pet. App. 2a ("[i]t is undisputed that, following the births of the children, V.L. acted as a parent to them").

As the Petition explains, the Alabama Supreme Court's decision "flouts a century of precedent on the Full Faith and Credit Clause and will have a devastating impact on Alabama adoptive families," and review is appropriate for these reasons alone. *See* Pet. 1, 27-36. This brief in support of the Petition explains that this Court's review is also warranted for the additional reason that the decision below undermines the important role that the Full Faith and Credit Clause plays in our constitutional structure, as the text and history of the Clause both make clear.

When the framers drafted our enduring Constitution, they were operating against the backdrop of significant state-on-state discrimination; among other things, states refused to respect the judgments and laws of their sister states, and they denied the privileges and immunities of citizenship to citizens of other states. The framers understood that such "trespasses of the States on each other," 1 *The Records of the Federal Convention of 1787*, at 317 (Max Farrand ed., 1911), were incompatible with the "more perfect Union" that they were drafting the Constitution to establish.

The framers thus drafted the Full Faith and Credit Clause to prohibit these trespasses and "transform[] an aggregation of independent, sovereign States into a nation." *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948). As the text of the Clause makes clear, it imposes a binding obligation on the states to give "Full Faith and Credit to the public Acts, Records, and judicial Proceedings of every other State," U.S. Const. art. IV, § 1, thereby ensuring that

throughout the new nation "a just obligation [could] be demanded as of right, irrespective of the state of its origin," *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

The drafting history of the Clause confirms that the framers intended to impose this binding obligation on the states. An early version of the Clause did not create this self-executing command of full faith and credit, but instead left the scope of the clause to Congress. Recognizing how critical it was to the new nation that states honor each other's judgments and laws, the framers amended the language of the draft Clause to make the Clause self-executing and thereby ensure that states could not engage in the sorts of discriminatory acts that existed under the Articles of Confederation.

Consistent with the text and history of the Full Faith and Credit Clause, this Court has repeatedly recognized that "the full faith and credit obligation is exacting," and "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998). Thus, one state may not refuse to enforce a judgment entered in another state simply because it disagrees with that state's laws. *Id.* at 243 (Kennedy, J., concurring).

To ensure that states honor the requirements of the Full Faith and Credit Clause, this Court has made clear that there are only limited circumstances in which a state need not give full faith and credit to a judgment issued by a sister state. Indeed, although the Court has recognized a narrow exception to the Full Faith and Credit Clause for cases in which a sister state court lacks jurisdiction to enter the judg-

ment, it has also carefully limited that exception. As the Court held in *Milliken v. Meyer*, 311 U.S. 457 (1940), if a "judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.'" *See id.* at 462 (quoting *Adam v. Saenger*, 303 U.S. 59, 62 (1938)).

The court below did just the opposite, treating what was clearly a *merits* question as a *jurisdictional* one, and using that purported jurisdictional defect as a basis for refusing to honor the Georgia adoption decree at issue. Even absent a presumption, there should have been no question that the Georgia court had jurisdiction over the case—Georgia law provides that superior courts have "exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19-8-2(a); *see* Pet. App. 19a—and the existence of the presumption only underscores how reticent a court should be to refuse to honor a sister court's judgment for lack of jurisdiction. Yet the court below concluded that the Georgia court lacked jurisdiction because, in its view, the requirements of Georgia's adoption statute were not satisfied, and so the court should not have granted the adoption. If the court below were right, the narrow exception to the Full Faith and Credit requirement for cases in which the issuing court lacked jurisdiction would readily swallow the rule and undermine the "exacting" obligation that states honor each other's judgments that the framers enshrined in our national charter. *See Baker*, 522 U.S. at 233.

Amicus urges this Court to grant review and hold that the decision below violates the Full Faith and Credit Clause.

ARGUMENT

THE COURT SHOULD GRANT REVIEW TO HOLD THAT THE DECISION BELOW VIOLATES THE FULL FAITH AND CREDIT CLAUSE

A. The Text and History of the Full Faith and Credit Clause Require States To Respect the Equal Dignity of Sister States and Honor Their Judgments

The Full Faith and Credit Clause of Article IV provides, in pertinent part, that "[f]ull [f]aith and [c]redit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV, § 1. As this Court has long recognized, the Full Faith and Credit Clause was "incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." *Sherrer*, 334 U.S. at 355. The framers understood that they could not establish a "more perfect Union" if the individual states continued to exist as "independent foreign sovereignties" and remained "free to ignore obligations created under the laws or by the judicial proceedings of the others." *Milwaukee Cnty.*, 296 U.S. at 277. They thus sought to make the states "integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Id.*

The framers' commitment to this fundamental principle that each state must honor obligations created under the laws of the other states was a direct result of their experiences under the Articles of Con-

federation. *See, e.g.*, *Haywood v. Drown*, 556 U.S. 729, 755 n.5 (2009) (Thomas, J., dissenting) (describing the Full Faith and Credit Clause as a "prohibition on discrimination" designed to "address state-to-state discrimination"). In America under the Articles, state-on-state discrimination was prevalent. States refused to respect the judgments and laws of their sister states, denied citizens of other states the privileges and immunities of citizenship, and imposed discriminatory restrictions on out-of-state commerce. *See* James Madison, *Vices of the Political System of the United States*, *in* 2 *The Writings of James Madison* 361, 362-63 (Gaillard Hunt ed., 1901); *see The Federalist No. 80*, at 445 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (describing history of "bickerings and animosities" that "may spring up among the members of the Union"). James Madison noted the "trespasses of the States on each other," 1 *The Records of the Federal Convention of 1787*, *supra*, at 317, and observed that these "alarming symptoms may be daily apprehended." *See* Madison, *supra*, at 362.

As its text makes clear, the Full Faith and Credit Clause imposes a binding obligation on states to honor the judgments and acts of its sister states, treating them as equal in authority to the state's own judgments and laws. In so doing, the Full Faith and Credit Clause prevents states from discriminating against the judgments and laws of other states and ensures "maximum enforcement in each state of the obligations or rights created or recognized by sister states." *Hughes v. Fetter*, 341 U.S. 609, 612 (1951).

By including in the text of our nation's charter a constitutional requirement of full faith and credit, binding on the states, the framers demanded that each state respect the equal dignity of its sister states

by giving out-of-state judgments and acts "not some but *full* [faith and] credit." *Davis v. Davis*, 305 U.S. 32, 40 (1938) (emphasis added); *see* 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1304 at 180 (1833) (explaining that "full faith and credit" requires a state to give out-of-state judgments and laws "positive and absolute verity, so that they cannot be contradicted, or the truth of them denied, any more than in the state, where they originated").

In making the Full Faith and Credit Clause a part of the Constitution, the framers "form[ed] a more perfect Union," giving "each state a higher security and confidence in the others, by attributing a superior sanctity and conclusiveness to the public acts and judicial proceedings of all" and ensuring that "rights and property would belong to citizens of every state in many other states than th[e one] in which they resided." 3 Story, *supra*, § 1303 at 179. In the new nation, Americans could freely travel from state to state without fear that rights secured in one state would be dismissed or nullified in another. No state could discriminate against another's laws and judgments, refusing to recognize and enforce them.

Other aspects of Article IV, too, addressed the state-on-state discrimination that Madison had condemned as "trespasses of the States on each other." 1 *The Records of the Federal Convention of 1787*, *supra*, at 317 The Privileges and Immunities Clause, which follows the Full Faith and Credit Clause in the text of Article IV, prohibits a state from discriminating against citizens of other states, a requirement Alexander Hamilton called "the basis of the Union." *See The Federalist No. 80*, *supra*, at 446 (Alexander Hamilton). Without this requirement of equality, "the Republic would have constituted little more than a

league of States; it would not have constituted the Union which now exists." *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1868), *overruled in part by United States v. Se. Underwriters Ass'n*, 322 U.S. 533 (1944).

The drafting history of the Full Faith and Credit Clause confirms what the text makes clear: the Full Faith and Credit Clause is an affirmative command binding on the states. The framers chose language that required states to respect the judgments and acts of their sister states, rejecting proposed language that did not create any clear constitutional command on the states. An early version of the Full Faith and Credit Clause proposed by the Committee of Eleven[2] did not create any self-executing command of full faith and credit, but instead left the scope of the Clause to the judgment of Congress.

On September 1, 1787, the Committee of Eleven proposed that "[f]ull faith and credit ought to be given in each State" and that "the Legislature shall by general laws prescribe the manner in which such acts, Records, & proceedings shall be proved, and the effect which Judgments obtained in one State, shall have in another." 2 *The Records of the Federal Convention of 1787*, *supra*, at 485. In the debate that ensued a few days later, James Madison successfully moved to make the Full Faith and Credit Clause a self-executing command—striking out the word "ought" and replacing it with the word "shall"—and gave Congress legislative power to implement the constitutional requirement of full faith and credit. *Id.* at 489; *see also* Douglas Laycock, *Equal Citizens of Equal*

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[2] The Committee of Eleven, consisting of one member from each of the states represented at the Convention, was one of the committees appointed during the Convention to draft the text of the Constitution.

and Territorial States: The Constitutional Foundations of Choice of Law, 92 Colum. L. Rev. 249, 292 (1992) ("The effect of Madison's amendment was to make the clause self-executing, commanding full faith and credit in the constitutional text and making congressional action discretionary, instead of commanding congressional action and leaving the clause dependent on implementation of the command to Congress.").

B. The Decision of the Court Below Is Completely at Odds with the Text and History of the Full Faith and Credit Clause, as Well as this Court's Precedents

Consistent with the text and history of the Full Faith and Credit Clause, this Court has many times held that "the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker*, 522 U.S. at 233. A judgment "may not be denied enforcement," this Court has held, "based upon some disagreement with the laws of the State of rendition. Full faith and credit forbids the second State to question a judgment on these grounds." *Id.* at 243 (Kennedy, J., concurring); *see Milwaukee Cnty.*, 296 U.S. at 277 ("[C]redit must be given to the judgment of another state, although the forum would not be required to entertain the suit on which the judgment was founded.").

To ensure that states respect the requirements of the Full Faith and Credit Clause, this Court has also recognized that there are only limited circumstances in which a state need not give full faith and credit to a judgment issued by a sister state. Indeed, as the Petition discusses, although the Court has carved out

a narrow exception to the Full Faith and Credit Clause for cases in which a sister state court lacked jurisdiction to enter the judgment, it has also carefully limited that exception. *See* Pet. 14-16.

Most significantly, this Court has made clear that where a court of general jurisdiction renders a judgment, state courts asked to enforce that judgment should presume that it had jurisdiction to render the judgment at issue. *See Milliken*, 311 U.S. at 462 ("if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself" (quoting *Adam*, 303 U.S. at 62)). And in such cases, the Court emphasized, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Id.*; *see ids.* ("Whatever mistakes of law may underlie the judgment, it is 'conclusive as to all the media concludendi.'" (citation omitted) (quoting *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908))). Were it otherwise, state courts could refuse to honor judgments of their sister state courts simply by claiming that the sister courts lacked jurisdiction, thereby undermining the nationwide effect of judgments that the framers recognized was so critical to the success of the "more perfect Union" that they were establishing.

Instead of presuming that the Georgia court had jurisdiction to issue the adoption judgment at issue, as this Court's precedents require, the court below went out of its way to conclude otherwise. Even though Georgia law provides that superior courts have "exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19-8-2(a); *see* Pet. App. 19a ("it

is undisputed that Georgia *superior* courts like the Georgia court have subject-matter jurisdiction over, that is, the power to rule on, adoption petitions"), the court below nonetheless concluded that the Georgia court lacked jurisdiction here because, in its view, the Georgia court erred in applying Georgia law, and the requirements of Georgia's adoption statute were not satisfied. Whether or not the Georgia court erred in granting the adoption request, that is a quintessential *merits* question, not a jurisdictional question. *See* Pet. 17-18. And, as just noted, the court below should have presumed that the Georgia court had jurisdiction to grant the adoption in the absence of any extrinsic evidence or evidence in the record that would undermine that presumption, and none exists here. *See id.* at 18-19. If the court below were right, the narrow exception to the Full Faith and Credit requirement would readily swallow the rule and undermine the "exacting" obligation the framers enshrined in our national charter. *See Baker*, 522 U.S. at 233.

Moreover, if lower courts are allowed to contort possible merits deficiencies into jurisdictional defects, as the court below did here, it would also raise the prospect that courts will use purported jurisdictional deficiencies in order to refuse to honor judgments with which they have a substantive policy disagreement. Indeed, here, as the Petition argues, "there is reason to be concerned that the Alabama Supreme Court's departure from full faith and credit precedent reflects a public policy objection to adoption by a parent's same-sex partner." Pet. 26; *see id.* at 27, 27 n.4. Yet as this Court has recognized, "[t]he Full Faith and Credit Clause is not to be applied, accordion-like, to accommodate our personal predilections." *Estin v. Estin*, 334 U.S. 541, 545-46 (1948). Rather, the Full

Faith and Credit Clause "ordered submission by one State even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system . . . demanded it." *Estin*, 334 U.S. at 546; *see also Baker*, 522 U.S. at 233.

This Court should not countenance the decision of the court below to violate this Court's precedents and undermine the Full Faith and Credit Clause that the framers concluded our "federal system . . demanded." *Estin*, 334 U.S. at 546. This Court should grant review and hold that the decision below violates the Full Faith and Credit Clause.

CONCLUSION

For the foregoing reasons, *amicus* urges the Court to grant the Petition for a Writ of Certiorari.

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BRIEF OF *AMICI CURIAE* DONALDSON ADOPTION INSTITUTE, NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, FIRST FOCUS, CENTER FOR THE STUDY OF SOCIAL POLICY, CHILD WELFARE LEAGUE OF AMERICA, VOICE FOR ADOPTION, AMPERSAND FAMILIES, CENTER FOR ADOPTION POLICY, AND FAMILY BUILDERS BY ADOPTION IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Since 1996, the **Donaldson Adoption Institute (DAI)** has worked to improve the lives of children and families across the country and around the world through research, education, and advocacy that have led to better laws, policies, practices, and perceptions. To achieve its goals, DAI investigates the issues and problems of greatest concern to first/birth parents, adopted persons, adoptive families, and the people who love them. DAI then determines best practices and offers policy recommendations. It works with a broad array of partners in educational efforts and advocacy campaigns to eliminate policy and practice barriers—including obstacles faced by gay and lesbian individuals and couples—to adoption of children in foster care waiting for permanent homes. DAI's newest initiative, Let's Adopt Reform, seeks to reframe the adoption conversation with new public opinion research and the voices of the adoption community to ignite a new national dialogue about adoption in the 21st century and advocate for change by outlining critical policy and practice reforms.

The **North American Council on Adoptable Children (NACAC)** is a non-profit organization that

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[1]Pursuant to Supreme Court Rule 37.3(a), all parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court. Further, pursuant to Rule 37.6, no person other than *Amicus Curiae* and their counsel have participated in drafting this brief or made a monetary contribution intended to fund the preparation or submission of this brief.

promotes and supports permanent families for children and youth in the U.S. and Canada—especially children and youth who are or have been in foster care and those with special needs. To accomplish its mission, NACAC offers adoption support, capacity building for parents and youth, policy and advocacy, and education and information sharing. NACAC has long been dedicated to reducing barriers that prevent all children and youth from having a permanent, loving family, including restrictions that prevent or discourage gays and lesbians from adopting or fostering children who need a family.

First Focus is a bipartisan advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. First Focus leads a comprehensive advocacy strategy, with its hands-on experience with federal policymaking and a commitment to seeking policy solutions. One of First Focus' priority issues is Child Rights: Every child should have quality healthcare, a good education, and a safe home and community.

The Center for the Study of Social Policy (CSSP), a nonpartisan Washington, D.C., non-profit organization, has been working with state and federal policymakers and communities across the country for over thirty years. Focused on public policy, research and technical assistance, CSSP promotes smart policies that improve the lives of children and their families and works to achieve equity for those too often left behind. Using data, extensive community experience and a focus on results, CSSP's work covers several broad areas, including promoting public policies that strengthen vulnerable families; reforming child welfare systems; mobilizing a national network to prevent child abuse and promote optimal development for young children

(Strengthening Families Initiative); assisting tough neighborhoods with the tools needed to help parents and their children succeed (Promise Neighborhoods); educating residents to be effective consumers securing better goods and services (Customer Satisfaction Project); and promoting, through all its work, an even playing field for children of all races, ethnicities, and income levels. CSSP's work in child welfare focuses on ensuring that child welfare policies, practices, and systems meet the safety, permanency, and well-being needs of the children and youth that come to the attention of the public child welfare system. At the core of CSSP's efforts is a long-standing commitment that children need the stability and support of life-long families and that, whenever possible, children should remain with their biological families.

The Child Welfare League of America (CWLA), established in 1920, is the nation's oldest and largest membership-based child welfare organization. CWLA is a coalition of public and private agencies serving children and families who are vulnerable by advancing standards of excellence, accreditation, and the best research-based practices with respect to child welfare work. In particular, CWLA is recognized nationally as the standard-setter for child welfare services and publishes thirteen "Standards of Excellence" as a means to achieve professionalism and uniformity in the administration of child welfare services, including in particular Standards of Excellence for Adoption Services. CWLA's Standards also influence and improve child welfare practices throughout North America, as well as informing the Standards of Accreditation for agency administration, management, and service delivery for accredited child welfare agencies.

Voice for Adoption (VFA) is a membership advocacy organization with a network of grassroots adoption and child welfare advocates throughout the country. VFA develops and advocates for improved adoption policies, and its members recruit and support adoptive families. Recognized as a national leader in special needs adoption, VFA works closely with federal and state legislators to make a difference in the lives of the 108,000 children in foster care who are waiting to be adopted and the families who adopt children from foster care. VFA is concerned about children who unnecessarily languish in foster care in need of permanent families. VFA believes that children deserve every opportunity to have a permanent, loving family, and that ruling out prospective parents due to their sexual orientation limits children's options for permanency. VFA opposes policies and practices that discriminate against prospective parents, including but not limited to discrimination based on age, race, ethnicity, gender, sexual orientation, religion, marital status, family size, disability, medical condition, geographic location, employment status, occupation, and educational attainment. VFA is supportive of policies, practices, and laws that ensure that young people in foster care are afforded the best opportunity to grow and lead successful lives, thus it supports making decisions about matching waiting children with prospective parents on a case-by-case basis, based on the best interests of each child.

Ampersand Families recruits and supports permanent families for older youth, and champions practices in adoption and permanency that restore belonging, dignity and hope.

The Center for Adoption Policy (CAP) is a New York based 501(c)3 organization. Its mission is to

provide research, analysis, advice and education to practitioners and the public about current legislation and practices governing ethical domestic and intercountry adoption in the United States, Europe, Asia, Latin America, and Africa. CAP is an independent entity. It is not affiliated with any agency or entity involved in the placement of children.

Family Builders by Adoption believes that every child has the right to grow up in a permanent, nurturing family regardless of that child's age, race, ethnicity, gender, religion, sexual orientation, gender identity/expression, or medical, physical, or emotional condition. Family Builders educates the community about the needs of waiting children, advocates on their behalf, and places children with permanent, secure families through adoption, and other forms of permanence. Family Builders' goal is that no child will leave the foster care system without a permanent, loving, and caring parent.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Petition has demonstrated convincingly that the Alabama Supreme Court's decision violates the Full Faith and Credit Clause, a contention we support but will not belabor. *Amici Curiae*, all nonprofit groups focused on best practices for adopted children, file this brief to highlight the grave impact on adopted children of undoing completed adoptions.

The States widely recognize the adverse effect of unwinding an adoption and have passed statutes to protect the finality of adoptions. These statutes reflect the strong public policy interest in preventing harms to adoptive children that result from having

their relationship with an adoptive parent severed. Substantial social science research demonstrates what we all know as human beings: children who are separated from a parent face a serious risk of irreparable psychological harm.

The repercussions of the Alabama decision are potentially far-reaching. Under the decision's reasoning, a state court may decline to recognize an adoption from another state based on its belief that the court that granted the adoption did not strictly comply with a statutory provision. That is a very dangerous precedent that endangers the well-being of adopted children. Until now, decisions invalidating out-of-state adoptions have been extremely rare. The Court should grant *certiorari* to prevent the Alabama decision's reasoning from being followed by any other state court, thereby putting even more adopted children in harm's way. *See infra* Section I.

Another reason the Court should grant *certiorari* is that the Alabama decision places a particular class of adoptive children at risk: those who have gained an additional parent through second parent adoptions. In these adoptions, an existing parent's parental rights and responsibilities are not terminated. Instead, the child gains an additional parent. Most States' statutes, like Georgia's, do not expressly provide for second-parent adoptions. But States have nonetheless interpreted their statutes to permit them.

These statutory schemes begin with the paradigm of a traditional adoption. Under that paradigm, upon an adoption, all existing parental relationships are terminated, and the child gains a new adoptive parent or parents. But that paradigm does not reflect the reality of all adoptions. As a result, most

States allow stepparent adoptions, in which (1) an existing parent retains parental rights and responsibilities and (2) the child gains a new adoptive parent who is married to the existing parent.

Unlike the Alabama Supreme Court, however, most state courts have declined to interpret stepparent adoption provisions as a ban on allowing similar adoptions by unmarried couples. As a result, thousands of children nationwide have gained an additional parent through a second-parent adoption, even though the adoptive parent is not married to the child's existing parent.

The reasoning of the Alabama Supreme Court creates a serious threat of disruption to the parent-child relationships that have been legally recognized in this fashion. If followed by other state courts, the Alabama Supreme Court's decision would imperil the continued recognition of these second-parent adoptions. *See infra* Section II(A). In addition to the serious trauma that can be caused by severance of a parent-child relationship, affected children would face other highly negative consequences, including loss of health insurance, child support, inheritances, and the security of having the adoptive parent available to care for the child in the event of the biological/first parent's death. *See infra* Section II(B).

For all of these reasons, the Alabama Supreme Court's decision presents a serious risk to adopted children that warrants granting *certiorari*.

ARGUMENT

I. THE DECISION BELOW THREATENS A BEDROCK PRINCIPLE OF ADOPTION LAW THAT PROTECTS CHILDREN: FINALITY.

Georgia's ban on collateral attacks on completed adoptions after six months (*see* Ga. Code Ann. §19-8-18(e) (2015)) reflects a broad national consensus that adoptions require more protection from collateral attacks than other types of judgments. State legislatures nationwide impose time limitations similar to Georgia's that bar collateral attacks on completed adoptions. 2 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases* §14.28 n.1 (Westlaw database updated Dec. 2015) (collecting statutes).[2] Ironically, Alabama itself prohibits

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[2] *See* Ala. Code §26-10A-25(d) (2015) (one year); Alaska Stat. §25.23.140 (2015) (one year, unless adoptee not yet in adoptive parents' custody or adult adoptee had no notice of the adoption decree within the one-year period); Ariz. Rev. Stat. Ann. §8-123 (2015) (one year); Ark. Code Ann. §9-9-216 (2015) (one year, unless adoptee not yet in adoptive parents' custody or adult adoptee had no knowledge of the adoption decree within the one-year period); Cal. Fam. Code §9102 (2015) (one year except for fraud); Colo. Rev. Stat. §19-5-214 (2015) (91 days; one year for stepparent adoption); Del. Code Ann., tit. 13, §918 (2015) (six months); D.C. Code Ann. §16-310 (2015) (one year); Fla. Stat. Ann. §63.182 (2015) (one year); Haw. Rev. Stat. §578-12 (2015) (one year); 750 Ill. Comp. Stat. 50/11 (2015) (12 months); Ky. Rev. Stat. Ann. §199.540 (2015) (one year); La. Child. Code art. 1148 (2015) (ninety days); Md. Code Ann., Fam. Law §5-342, 5-353 (2015) (one year); Mich. Comp. Laws Ann. §710.64 (2015) (21 days); Miss. Code Ann. §93-17-15 (2015) (six months); Mo. Rev. Stat. §453.140 (2015) (one year); Neb. Rev. Stat. §43-116 (2015) (two years); N.H. Rev. Stat. Ann. §170-B:21 (2015) (one year); N.C. Gen. Stat. §48-2-607 (2015) (cannot

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virtually any kind of collateral attack on an adoption after one year has passed. Ala. Code §26-10A-25(d) (2015). Georgia's statutory bar to collateral attacks on adoptions applies even to jurisdictional attacks. *Williams v. Williams*, 717 S.E.2d 553, 553-54 (Ga. Ct. App. 2011).

These limitations on collateral attacks on adoption judgments reflect "the compelling public interest in the finality and certainty of judgments . . . affecting familial relations," an interest the Alabama Supreme Court acknowledged in its decision (*see* Pet. App. 14a (quoting *Bates v. Bates*, 730 S.E.2d 482, 483 (Ga. Ct. App. 2012))), but then proceeded to disregard. The Petitioner here has amply demonstrated that the decision violates the Full Faith and Credit Clause because the Alabama Supreme Court engaged in what it called its "own analysis of the Georgia adoption statutes." Pet. App. 22a. That violation also undermines the critical public policy underlying Georgia's six-month limit on collateral attacks to an adoption: protecting children who have

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be attacked at any time, except for appeal); N.D. Cent. Code §14-15-16 (2016) (one year, unless adoptee not yet in adoptive parents' custody); Ohio Rev. Code Ann. §3107.16 (2016) (one year, unless adoptee not yet in adoptive parents' custody or adult adoptee had no notice of the adoption decree within the one-year period); Okla. Stat. Ann. tit. 10, §7505-7.2 (2016) (three months); Or. Rev. Stat. §109.381 (2015) (one year); R.I. Gen. Laws §9-21-2 (2016) (one year); Tenn. Code Ann. §36-1-122 (2016) (one year); Tex. Fam. Code Ann. §162.012 (2016) (cannot be attacked after six months); Wash. Rev. Code Ann. §26.33.360 (2016) (parent who executed consent may not attack decree after one year); W. Va. Code Ann. §48-22-704 (2016) (six months).

become bonded to a parent from the trauma of separation.

The Alabama Supreme Court's decision will have serious adverse consequences for adopted children. The continuity of parent-child relationships is vital to children's healthy development. *See, e.g.*, Joseph Goldstein, Anna Freud & Albert J. Solnit, *Beyond The Best Interests of the Child* 27, 31–33 (1979). Any significant disruption to the parent-child relationship can cause short-term and long-term mental health effects. *Frank J. Dyer, Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee*, 10 Psychol. Pub. Pol'y & L. 5, 11 (2004).

When a child's relationship with a parent is severed, the psychological impact on the child can permanently damage the child's ability to form healthy relationships later in life. Goldstein, *supra*, at 33-34. "Research has shown that older children, adolescents, and adults with a history of insecure attachments are likely to have difficulty developing secure ones." James X. Bembry & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 Child & Adolescent Soc. Work J. 177, 182 (1999); W Andrew Collins & L. Alan Sroufe, *Capacity for Intimate Relationships: Developmental Construction, in The Development of Romantic Relationships in Adolescence* 125-27 (Wyndol Furman et al., eds., 1999). Thus, the negative mental health effects of disruption to the parent-child relationship may extend far beyond childhood.

The effects of disruption to the parent-child relationship are particularly acute in early adolescence when children undergo so many rapid changes that separation from a parent can cause a "pileup" effect.

Bembry & Ericson, *supra*, at 179; *see also* Dyer, *supra*, at 11 ("there are numerous empirical findings that provide a solid research basis for predictions of long-term harm associated with disrupted attachment and loss of a child's central parental love objects").

Children assume that they can depend on the adults who are their parents. When that assumption proves wrong, "a child may question many other assumptions about the world [including] whether he or she can count on the availability of *any* parent." William F. Hodges, *Interventions for Children of Divorce: Custody, Access and Psychotherapy* 8 (2d ed. 1991) (emphasis in original).

The emotional damage to a child arising from the termination of a parental relationship can have dramatic and concrete adverse effects on the child. The severing of a school-age child's bonded relationship with a person who has functioned as his or her parent can lead to behavioral problems at school and with the law. Dyer, *supra*, at 11.

The Alabama Supreme Court has opened the door to reconsideration of any adoption that could be said to deviate in any way from the statutory requirements of the State where it was granted. That is a very dangerous precedent that stands only to harm children. While States may, of course, impose limits and regulations on adoption, once an adoption takes place, it is critical to the child's well-being that it not be subject to rescission years after the fact. For this reason, the Court should grant *certiorari* to protect all adopted children.

II. CERTIORARI SHOULD BE GRANTED TO PROTECT SIMILARLY SITUATED CHILDREN NATIONWIDE.

A. The Decision Threatens The Finality Of Second-Parent Adoptions In Numerous States.

The instant case does not arise from unique facts or law; to the contrary, Georgia's adoption statutes are typical of adoption statutes nationwide. As a result, the Alabama Supreme Court's re-examination of the merits of an adoption performed in another state represents a serious risk to adopted children throughout the country if embraced by other States.

As in Georgia, the statutes of most States were written with the traditional adoption in mind, in which two things happen: (1) a child is adopted by a new parent or parents who are not biologically related to the child, and (2) the parental rights of the child's birth parents are simultaneously terminated. Haralambie, *supra*, §14:1. In light of this paradigm, most state adoption statutes anticipate that an adoption terminates the rights of all biological parents.

Most States, however, recognize stepparent adoption as an exception to the rule that an adoption automatically terminates the rights of a child's existing parents. Susanna Birdsong, *Voiding Motherhood: North Carolina's Shortsighted Treatment of Subject Matter Jurisdiction in Boseman v. Jarrell*, 21 Am. U.J. Gender Soc. Pol'y & L. 109, 112 (2012). Under that exception, one of the child's biological parents may consent to having a person to whom that parent is legally married adopt

the child, without the termination of that biological parent's rights and responsibilities.[3] *See, e.g.*, Ind. Code Ann. §31-19-15-2(a) (2015); *In re Adoption of K.S.P.*, 804 N.E.2d 1253, 1255 (Ind. Ct. App. 2004).

In recent decades, most States have extended the stepparent exception to adoptions known as second parent adoptions in which the adoptive parent is not legally married to the current legal parent. *See infra* pp.14–15. As with a stepparent adoption, the child is adopted by a second, non-biological parent, with the consent of the first parent who does not relinquish parental rights and responsibilities. These reforms enabled same-sex partners to adopt the children of their partner, even before any State permitted same-sex marriage,[4] just as stepparents in opposite-sex marriages could.

Although many second parent adoptions involve same-sex couples, the California Supreme Court has explained that second parent adoptions are also granted in other situations. *Sharon S. v. Superior Court*, 73 P.3d 554, 571 (Cal. 2003). As examples, it identified adoption by an unmarried partner in an

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[3]In stepparent adoptions and second parent adoptions in which there is another living biological parent, most States require that the parental rights of that other biological parent be terminated before a stepparent adoption is granted. In this case, however, the children had only one biological parent, E.L.

[4]With this Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), same-sex couples now have the right to marry in every State. That does not resolve the problem the Alabama Supreme Court's decision has created for second-parent adoptions granted prior to *Obergefell* to same-sex partners who were then unable to marry. And, as discussed below, second-parent adoptions are not and have not been limited to same-sex couples previously excluded from marriage.

opposite-sex relationship and "kinship adoptions, in which a grandparent or other relative [becomes] a second legal parent to a child whose very young mother is unable to raise the child on her own." *Id.* Accordingly, the need to protect finality remains crucial to a variety of completed second parent adoptions.

While stepparent adoption is recognized by statute in most jurisdictions, second parent adoptions by non-married couples are provided for by statute in only four states: California,[5] Colorado,[6] Connecticut,[7] and Vermont.[8] Ten other jurisdictions have recognized second parent adoptions through appellate court decisions: the District of Columbia,[9] Idaho,[10] Illinois,[11] Indiana,[12] Maine,[13]

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[5]Cal. Fam. Code §8617. Prior to the California Legislature authorizing second parent adoption by statute in 2013, the California Supreme Court had recognized second parent adoptions in *Sharon S. v. Superior Court*, 73 P.3d 554, 571 (Cal. 2003).

[6]Colo. Rev. Stat. §§19-5-203(1)(d.5)(I), 19-5-208(5), 19-5-210(1.5), 19-5-211(1.5) (2015).

[7]Conn. Gen. Stat. §45a-724(a)(3) (2015) ("any parent of a minor child may agree in writing with one other person who shares parental responsibility for the child with such parent that the other person shall adopt or join in the adoption of the child").

[8]Vt. Stat. Ann. tit. 15A, §1-102(b) (2015) ("If a family unit consists of a parent and the parent's partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent. Termination of the parent's parental rights is unnecessary in an adoption under this subsection.").

[9]*In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. 1995).

[10]*In re Adoption of Doe*, 326 P.3d 347 (Idaho 2014).

Massachusetts,[14] New Jersey,[15] New York,[16] Oklahoma,[17] and Pennsylvania.[18] Trial court judges have granted second parent adoptions in at least sixteen additional states, including: Alabama, Alaska, Delaware, Georgia, Hawaii, Iowa, Louisiana, Maryland, Michigan, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Texas, and Washington. Joan H. Hollinger, *Adoption Law and Practice* (3d ed. 2015); *see also* Leslie Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, 20 Am. U.J. Gender Soc. Pol'y & L. 467, 471–72 (2012).

Accordingly, while at least 30 states have permitted second-parent adoptions, almost all of them have done so under statutory frameworks that, like Georgia's, do not expressly embrace the concept. As a result, the number of children who could be adversely affected by the Alabama Supreme Court's decision is large. *See Sharon S.*, 73 P.3d at 571–72 (noting that permitting challenge to second-parent adoption "would cast a shadow of uncertainty over

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[11] *In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995).

[12] *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004).

[13] *In re Adoption of M.A.*, 930 A.2d 1088 (Me. 2007).

[14] *In re Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993).

[15] *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995).

[16] *In re Jacob*, 660 N.E.2d 397 (N.Y. 1995).

[17] *Eldredge v. Taylor*, 339 P.3d 888 (Okla. 2014).

[18] *In re Adoption of R.B.F. & R.C.F.*, 803 A.2d 1195 (Pa. 2002).

the legal relationships between thousands of children and their adoptive parents"). Not only are all children in Alabama who had a second-parent arrangement formalized in another State at risk, but similarly situated children in other States are also at risk if other state courts follow the flawed reasoning of the Alabama Supreme Court.

B. In Addition To the Trauma of Separation, The Decision Will Deprive Affected Children of Important Rights and Benefits Their Legal Relationship With An Adoptive Second Parent Would Otherwise Afford Them.

As discussed in Section I, separation from a parent can cause tremendous and lasting emotional harm to a child. Research demonstrates those negative mental health consequences can occur regardless of whether the parent is biologically related to the child. *See, e.g.*, Yvon Gauthier et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care*, 25 Infant Mental Health J. 379, 381, 394 (2004) ("Children cannot understand why they are being separated from the parents that were given to them and that they somehow gave themselves through an attachment process "). Disruption to children's bonded attachments to adults serving as their parents can cause the children to experience aggression, academic problems in school, and psychopathology. Ana H. Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 Early Child Dev. & Care 271, 274 (2005). The Alabama Supreme Court's decision has thus placed the children in this case and other affected children at serious risk.

In addition to emotional trauma, the Alabama Supreme Court's decision will also cause tangible harms to those adopted children who lose their legal relationship with their second parent. Second parent adoption protects children by giving them the security of having two legally recognized parents. The American Academy of Pediatrics supports second parent adoption by non-married partners because "these families and children need the permanence and security provided by having [two] fully sanctioned and legally defined parents."[19] It follows that unwinding completed second-parent adoptions creates very real insecurity and deprives the children affected of important rights.

The California Supreme Court, in rejecting a collateral attack on a second parent adoption by a biological mother who later regretted consenting to the adoption, explained that to allow such challenges "would invite withdrawals of entitlements to previously available health and pension benefits . . . The ultimate financial and emotional losers [would] be children who are the intended beneficiaries of the adoption laws." *Sharon S.*, 73 P.3d at 571–72 (internal quotation marks omitted).

The practical effects on adopted children of severing second-parent adoptions are many and include the following:

- *Health Insurance.* The child may be ineligible for employer-provided health insurance of

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[19]Am. Acad. of Pediatrics, *Coparent or Second-Parent Adoption By Same-Sex Partners* (2002), *available at* http://pediatrics.aappublications.org/content/pediatrics/109/2/339.full.pdf.

the second parent, because the second parent would be a legal stranger to the child.

- *Child Support.* *The parent whose adoptive ties are severed would not be legally required to support the child financially, either while in a relationship with the biological/first parent or after the termination of that relationship.*
- *Inheritance.* *A child who is not a legally recognized child of the deceased person is not covered by intestacy statutes and cannot inherit, even if the deceased acted as a parent and provided for the child since birth. See, e.g., Ellis v. West ex rel. West, 971 So. 2d 20, 22-23 (Ala. 2007) (reversing lower court for liberally construing the statute to avoid disinheriting minor children).*
- *Social Security Benefits.* *For purposes of Old-Age, Survivor and Disability Insurance ("OASDI") benefits, the definition of "child" is limited to "the child or legally adopted child of an individual," a stepchild under limited circumstances, or a grandchild or stepgrandchild under limited circumstances. See 42 U.S.C. §416(e) (2015).*
- *Worker's Compensation.* *When a worker dies, his or her children may be entitled to a death benefit. See, e.g., Ala. Code §25-5-31 (2015).*
- *Family Continuity.* *If the biological/first adoptive parent were to die while the second parent's rights were not legally recognized, the child could be left without a parent and be at risk of entering the foster system. The*

> *non-biological parent would be unable to carry out such basic functions to meet the child's needs as registering the child for school (Ala. Code §16-1-11.2 (2015)), or making medical decisions.*

Accordingly, the severing of a child's legal relationship with an adoptive parent deprives that child of the protection these benefits can provide. That result constitutes an obvious and intolerable injustice to children.

CONCLUSION

To protect adopted children that the Alabama Supreme Court's decision places at risk of irreparable harm, certiorari should be granted.

Respectfully submitted,

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In The
Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., and Guardian Ad Litem, as Representative of Minor Children,

Respondents.

On Petition For A Writ Of Certiorari To The Alabama Supreme Court

BRIEF OF AMICI CURIAE FAMILY EQUALITY COUNCIL, COLAGE, AND THE CAMPAIGN FOR SOUTHERN EQUALITY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF AMICI CURIAE[1]

Amici Curiae are organizations dedicated to promoting equality among our country's diverse families, in particular those comprised of lesbian, gay, bisexual, or transgender parents and their children. Each of the Amici has heard from its constituents that legal protections for the parent-child relationship are critical to the security and stability of their families. In this brief, Amici offer the stories of children of same-sex couples to illustrate the importance of their relationships with their parents and to underscore the danger the Alabama Supreme Court decision poses to their families.

Family Equality Council is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing LGBT parents and their children. Family Equality Council works extensively with the children of LGBT parents, including through its Outspoken Generation program, which empowers these children to speak out about their families, share their own stories and become advocates for family equality. Family Equality Council submits this

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[1] Written consent to the filing of this brief has been granted by all parties and filed with the Clerk of the Court. All parties received timely notice of Amici's intent to file this brief. No counsel for a party authored this brief, in whole or in part, and no person other than Amici Curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

brief on behalf of all of the young people with whom it has worked.

COLAGE is the only national organization for and led by people with a lesbian, gay, bisexual, transgender, or queer parent. COLAGE approaches its work with the understanding that living in a world that discriminates against and treats these families differently can be isolating and challenging for children. COLAGE was founded 25 years ago to support and empower children of same-sex couples and LGBTQ parents. Based on its direct experience in working with thousands of youth in these families over the past 25 years, COLAGE can attest to the critical importance of recognizing and respecting the relationships of same-sex couples and their adopted children on every level – socially, institutionally, politically and legally.

The Campaign for Southern Equality is an organization that promotes full equality in the lives of LGBT people and their families in the southern United States. The organization advocates for changes to state and federal law with the goal of ending the acute discrimination that LGBT people and their families often face in this region. The Campaign for Southern Equality submits this brief on behalf of all of its constituents, but in particular those children of same-sex couples whose families have been threatened by the Alabama Supreme Court's ruling.

SUMMARY OF ARGUMENT

Reading the Alabama Supreme Court's opinion, it would be easy to forget this case is about children.

This case asks whether an Alabama court can erase the legal relationship between a parent and adopted child because it disagrees with another state's application of its adoption statutes. At stake is whether children can rely on adoption to secure their legal relationships with their parents.

Ten years after their youngest child was born to E.L. and V.L., and eight years after E.L. consented to, and a Georgia court approved, V.L.'s adoption of their three children, the Alabama Supreme Court refused to recognize the adoption, eliminating the legal relationship between V.L. and her children in the state where they reside.

In her Petition, V.L. explains why the Alabama decision is wrong as a matter of law. In this brief, children raised by same-sex couples explain, in their own words, why the decision is also wrong as a matter of conscience and how it threatens families like theirs. This brief gives voice to those uniquely positioned to explain the importance of recognizing and protecting children's relationships with their adoptive parents and the harm the Alabama decision is likely to inflict on families in Alabama and elsewhere.

Every state handles adoption differently. This makes the finality, predictability, and stability guaranteed by our Constitution's full faith and credit

mandate critical in the adoption context. Otherwise, a child risks losing a legal parent simply by crossing state lines.

Accordingly, until September 18, 2015, it was settled that no state could second-guess another state's determination to grant an adoption. A child's adoptive parent in one state would be his or her parent in every other state. Up until now, legal relationships between parent and child – whether biological or adoptive – could be involuntarily severed in only the most specific of circumstances, after careful consideration by the courts of parental rights and the best interests of the child.

Under the new rule of law announced by the Alabama Supreme Court, this is no longer the case. Alabama's courts are now free to independently interpret a sister state's adoption statutes. If, in the judgment of the Alabama court, the sister court misapplied its own adoption laws, the legal relationship between parent and child ceases to exist.

This is what happened to V.L. and her children. But the impact of the Alabama decision reaches far beyond V.L.'s family. The Alabama decision was rendered in the context of second-parent adoptions, but *all* out-of-state adoptions are now open to the independent scrutiny of Alabama's courts. Alabama parents who adopted their children in any other state must now live in fear of a determination by Alabama courts that the adoptions were granted in error. And

if this Court allows the decision to stand, the problem will not necessarily be confined to Alabama.

Thousands of families who were protected by adoption are now in jeop rdy, no longer able to rely on a judgment establishing the legal relationship between parent and child. The impact this uncertainty has on children is immeasurable.

Amici offer the perspectives of children raised by same-sex couples, some of whom rely on adoption to protect their families and others who have suffered from the lack of a legal relationship with a parent. Their experiences will help the Court understand what the Alabama decision means and why this Court's review is urgently needed.

ARGUMENT

I. A CHILD'S RELATIONSHIP WITH PARENTS IS FUNDAMENTAL, AND THE LEGAL RELATIONSHIP BETWEEN A CHILD AND ADOPTIVE PARENTS IS CRITICAL

A child's relationship with his or her parents will often be the most important relationship in the child's life, both emotionally and practically. Parents create and shape much of the emotional and physical environment in which children live. Accordingly, the legal protections that secure the relationship of parent and child are of paramount importance. *See, e.g., Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship

between parent and child is constitutionally protected.").

The significance of the parent-child relationship does not depend on biology. Children raised by same-sex parents know this from their daily lives.

Ten-year-old K.S. describes life with his two mothers in Mobile, Alabama: "We play games, watch movies, go to the beach and have fun. My Mommo picks me up from school every day, and my Mommy makes the best fried chicken."[2]

Lily Alberts, a 23-year-old, describes the mothers who raised her in Tennessee as no different from any other parents:

> Just like any other kid, I had one parent who read me stories and tucked me in, and one who held my hand while we walked the dog. I had one parent who drove me to school, and one who made me brush my teeth.[3]

Similarly, 19-year-old Rianna Johnson-Levy, raised by two mothers in Michigan, explains:

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[2] Statement from K.S. to Family Equality Council (Nov. 2, 2015). All statements cited in this brief are on file with Amicus Family Equality Council. The children quoted in this brief do not seek anonymity. Initials are used for minors pursuant to the Court's direction in the context of merits briefs that names of minor children "should not be included in either the paper or the electronic version of a filing." Court's Guidelines for Electronic Submission of Briefs on the Merits (Oct. 1, 2013).

[3] Statement from Lily Alberts to Family Equality Council (June 10, 2014).

> My non-biological mom has been such a constant force in my life that I cannot imagine life without her. She is the parent who picked me up from school every day, braided my hair, and still makes sure that I get moved into the dorms at school each year.[4]

Kinsey Morrison, also 19, says that people have often asked which of her two mothers is her "real mom" – a question Kinsey finds both offensive and misguided:

> A mom is not someone who shares your DNA. She is someone who feels like home. She is someone who keeps you safe. She is someone who makes you laugh.
>
> She will hold you when you cry and then encourage you to get back up. She will love you at your worst and help you become your best, and you'll know you were better because you were hers. That is what makes a real mom. And I am lucky – so lucky – to have had two.[5]

The law recognizes that the parent-child relationship is not limited by biology, providing for adoption to secure the relationship between child and non-biological parent. Over time, adoption has changed to meet the evolving needs of children,

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[4] Statement from Rianna Johnson-Levy to Family Equality Council (Feb. 20, 2015).

[5] Statement from Kinsey Morrison to Family Equality Council (Dec. 12, 2015).

though the text of adoption statutes has not always kept up with the practices of many states' courts.

This is particularly true for second-parent adoptions, where a legally recognized parent and his or her partner establish a legal relationship between the second parent and child while keeping the other parent's rights intact. Guided by the overarching principle of serving the best interests of the child, courts in many states have construed adoption statutes to permit second-parent adoptions, even where the terms of a statute do not explicitly provide for them.

This was the case with the Georgia judgment granting V.L.'s adoption of E.L.'s three biological children – the children that both women had decided to conceive using assisted reproductive technology and then raised together from birth. Though Georgia's adoption statute provided for adoption only with the termination of existing parental rights, the Fulton County Superior Court decided that "[t]he adoption should be granted in the best interest of the children."[6]

Finding that V.L. "had functioned as an equal second parent to the children, since their birth" and that the "children relate to both [E.L.] and [V.L.] on an equal basis," the court concluded that:

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[6] Petition for Writ of Certiorari at 5-7, *V.L. v. E.L.*, Case No. 15-648 (filed Nov. 16, 2015) (quoting App. 50a).

> The children should have the legal benefits and protections of both their parents which will accrue as a result of their adoption. It would be contrary to the children's best interest and would adversely affect their right to care, support and inheritance and would adversely affect their sense of security and well-being to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother. The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births.[7]

Thus, V.L.'s children were given the legal protections of a relationship with their second mother – protections that were never in question from 2007, when they were established, to 2015, when the Alabama Supreme Court issued the decision in this case. With that decision, V.L. ceased to be her children's legal parent in Alabama, where they reside.

The precise number of children adopted through second-parent adoptions is unknown but estimated in the hundreds of thousands.[8] For decades, second-parent adoption has been the primary way same-sex couples ensured that their children had secure legal relationships with both parents.

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[7] *Id.*

[8] *See* Reply Brief of Petitioner in Support of Application for Recall and Stay at 3-4, *V.L. v. E.L.*, Case No. 15A522 (filed Dec. 1, 2015) (citing *Sharon S. v. Superior Court*, 73 P.3d 554, 568 (Cal. 2003)).

Second-parent adoption is what secured Rianna Johnson-Levy's relationship with her non-biological mother. The emotional implications of the adoption for Rianna and her family are profound:

> My adoption was done when I was very young, before I can remember, but there are photos of the day around my house. The judge who performed the ceremony is considered a hero in our house, in a way that few people are. She allowed my mother, who did not give birth to me but equally wanted me brought into the world, the opportunity to be a part of me.[9]

Rosemary Caldwell Llewellyn's family also protected itself through second-parent adoption. Rosemary and her twin brother were born in Peru and adopted by one of their fathers when they were infants. Back in the U.S., their other father adopted them as a second parent. Rosemary, now 25, explains that:

> Ever since then my two dads, my brother, and I have been a family not just in our hearts, but in the eyes of the law.
>
> I felt secure and comforted by the fact that if one of my dads were to die, or for whatever reason became unable to take care of my brother and me, our family would be legally

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[9] Rianna Johnson-Levy, *supra* note 4.

> protected and we would still have a parent in our other father, our Papi.[10]

II. REFUSING TO RECOGNIZE THEIR LEGAL RELATIONSHIPS WITH PARENTS HARMS CHILDREN

Unless their parents obtained a second-parent adoption in another state, children raised by same-sex parents in Alabama and the many other states whose laws have precluded adoption by same-sex couples have had to live without critical parental protections. The lack of a legal relationship with a parent burdens children emotionally and exposes them to the risk of devastating consequences from the death or disabling of a parent or the dissolution of their parents' relationship.

As 18-year-old Elliott Emfinger, who was raised by two mothers in Birmingham, Alabama, explains, "I have lived most of my life – legally – as the child of one parent, my birth mother."[11] Lacking a relationship to her non-biological mother, whom she calls "Sibbie," was hard for Elliott:

> I remember thinking that if something bad happened to Mom, I probably wouldn't be able to continue living with Sibbie, and I

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[10] Statement from Rosemary Caldwell Llewellyn to Family Equality Council (Nov. 20, 2015).

[11] Statement from Elliott Emfinger to Family Equality Council (Nov. 3, 2015).

> would have to completely uproot my life. That was terrifying.[12]

When Anna Frackman, now 25, grew up in Wisconsin, state law precluded her from having a legal relationship with both of the women who raised her:

> Officially I have only one parent. Families like mine deal with a different reality. We have the same childhood fears late at night for our loved ones: car accidents, job losses, dissolution of longtime relationships, but we also know that if and when terrible events happen, we are at risk of losing something else: each other.[13]

Though K.S. has always lived with both of the women who have raised him since birth, for nine of his ten years he has had a legal relationship only with his biological mother – a reality that dismayed him: "Both of my parents love me very much. It makes me sad to think that someone doesn't recognize my Mommo as my legal parent."[14]

Jamie Doepel, now 33, was raised in Oklahoma by both her biological mother and her second mother,

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[12] Elliott Emfinger, "I Helped My Moms (Finally) Get Married!" SEVENTEEN (June/July 2015), *available at* http://www.seventeen.com/life/real-girl-stories/a31943/i-helped-my-moms-finally-get-married/.

[13] Statement from Anna Frackman to Family Equality Council (Nov. 19, 2015).

[14] K.S., *supra* note 2.

Elaine. The mother-daughter relationship between Jamie and Elaine was never recognized by law:

> I am now a wife and mother, and I cannot fathom the thought of not having legal rights to my children's well-being. The idea that if a dire situation arose, I would not be able to be with my children makes my heart ache in a way that I cannot describe.
>
> This is what my parents endured every single day. To know that if the birth parent were to pass away or need to leave the home, the non-birth parent would be left without any rights to the children they helped raise was the reality of our situation. This is a very heavy burden for parents and children alike to bear, and I felt this.[15]

The lack of a legal relationship with a parent also impacts children in more prosaic ways as the family goes about its day-to-day life. As Elliott remembers: "[W]hen I first started kindergarten, Sibbie wasn't allowed to sign me out of school. It was ridiculous – she's my *mom*."[16]

Jamie's experience was similar. "Elaine, my mother's partner of 20-plus years, was just as big a part of my life as my biological mother or anyone could have been. She raised my younger brother and

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[15] Statement from Jamie Doepel to Family Equality Council (Nov. 25, 2015).

[16] Elliott Emfinger, *supra* note 12.

me as her very own." Nevertheless, Elaine "was never able to take me to the doctor. She was never able to sign my college forms. All of the mundane things couples deal with every day was a struggle for us."[17]

Rianna Johnson-Levy imagines what her childhood would have been like if adoption had not secured her non-biological mother's ability to care for her:

> My non-biological mom stayed at home while I was younger, so she was the one who brought me to my doctor's appointments, chaperoned my field trips, and picked me up when I was sick.
>
> The idea that my mom would not have been able to be legally attached to me is upsetting to me because I love her but also because I cannot imagine what my childhood would have been like if she had not been able to make choices regarding my health and well-being without approval from my other mother. It is inefficient and dangerous for a parent who holds real responsibilities for a child to not be able to legally uphold them.[18]

The practical implications of not having a legal relationship with a parent can arise suddenly and in situations that are already stressful or traumatic. The lack of a legal relationship between K.S. and his

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[17] Jamie Doepel, *supra* note 15.

[18] Rianna Johnson-Levy, *supra* note 4.

non-biological mother, Cari, created problems for the family from the outset. K.S. was born with a heart condition and at just three months of age needed open-heart surgery. Because Cari did not have paperwork proving she was K.S.' parent, hospital officials would not permit her to assist with his care.[19]

Kinsey Morrison had a similar experience. When she was a week old, she had a life-threatening reaction to a vaccine. The Kentucky hospital where she was treated allowed only one of her mothers – the one with a biological relationship – to be with her. Her other mother had to wait in the hall.[20]

Elliott explains that the significance of the legal relationship goes beyond a child's right to be cared for and does not end at the age of majority:

> As a young child I worried what would happen to me if tragedy struck our family such as illness, death, or parental separation, that would separate me from [my non-biological mother] Sibbie, who had no legal rights to take care of me. Now that I am almost a legal adult, I worry that I will have no lawful rights to take care of Sibbie as she ages.[21]

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[19] Statement from Cari S. to Family Equality Council (Nov. 3, 2015).

[20] Statement from Kinsey Morrison to Family Equality Council (Feb. 27, 2015).

[21] Elliott Emfinger, *supra* note 11.

Jamie experienced what Elliott fears. While Jamie's non-biological mother, Elaine, was away from home helping to care for an ailing sister, she died unexpectedly. Elaine's parents and siblings had not approved of her relationship with Jamie's mother and did not bother to inform Jamie's mother of Elaine's death. Because Jamie, her brother, and her mother were legal strangers to Elaine, no one was obligated to notify them. They found out Elaine had died only because the family's electricity account was in her name. Unlike Jamie and her mother, the utility company was informed of Elaine's death, and it shut off the power to their home. This is how Jamie learned she had lost her mother.

> Two days after Elaine was buried, my family found out that she was gone. She was my mother, and as her daughter, I believe I deserved the right to make those final arrangements.
>
> I had the right to put her in her favorite dress and make sure her makeup was done the way she would have wanted. It was my right to make sure her nails were polished in her favorite color and her rings, the ones my other mother gave to her, were cleaned and shining. It should have been my right to have a say in where she was laid to rest, but all these rights were denied to me because Elaine could not legally adopt me.
>
> In the coming weeks, I had to search rural cemetery after rural cemetery to finally find Elaine's grave, because not even knowing her

> final resting place is a hardship that comes with having no rights – rights of the parents to their children and rights of the children to their parents.[22]

III. THE ALABAMA DECISION INJURES CHILDREN, ERASING THEIR LEGAL RELATIONSHIPS WITH A PARENT, WITHOUT CONSIDERATION OF THE CHILDREN'S BEST INTERESTS

Adoption should eliminate the uncertainty, fear, and pain that Anna, K.S., Kinsey, Elliott, and Jamie describe. This is why families like V.L.'s and E.L.'s have worked so hard to secure second-parent adoptions. Under Georgia law, V.L.'s adoption of her children "create[d] the relationship of parent and child between" V.L. and the children, "as if [each child] were a child of biological issue of" V.L., Ga. Code Ann. § 19-8-19, and the Full Faith and Credit Clause has always meant that final adoption judgments must be respected throughout the country.

But adoptions cannot protect children if courts are free to treat them as if they never happened.

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[22] Jamie Doepel, *supra* note 15.

A. The Alabama Decision Eliminates the Finality and Security at the Heart of Adoption Laws

For children, adoption means finality and security, a permanent guarantee of the parent-child relationship. Elliott, whose mothers have recently married, and whose non-biological mother plans to adopt her, explains:

> My adoption will finally complete our family circle and bring a peace of mind I was never previously able to experience. With the support of the law behind us, we will each truly know that we will always have one another no matter what happens.[23]

K.S., whose non-biological mother was finally able to adopt him several months ago, says of the adoption: "It was a happy day and I am really proud that my family is now protected."[24]

Until the Alabama decision, children were correct in believing that their adoption meant that the support of the law was behind them and that their families were protected. Once a legal relationship between parent and child exists, the law will not abide its termination without satisfaction of a heavy burden. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) (rejecting "fair preponderance of the evidence" standard as insufficient to support termination of

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[23] Elliott Emfinger, *supra* note 11.

[24] K.S., *supra* note 2.

parental rights); Ala. Code § 12-15-319 (standard for terminating parental rights); Ga. Code Ann. § 15-11-310 (grounds for terminating parental rights).

This is true whether the parent is biological or adoptive. *See, e.g.*, Ala. Code § 26-10A-29 ("After adoption, the adoptee shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation. . . ."); *Steed v. Steed*, 877 So. 2d 602, 605-606 (Ala. Civ. App. 2003) (father who had legally adopted daughter stood on equal footing with the biological mother in custody determination). Like many other states, both Georgia and Alabama recognize the importance of finality in adoption, barring virtually any challenge to an adoption after a specified passage of time. Ga. Code Ann. § 19-8-18(e) (even jurisdictional challenges precluded after six months); Ala. Code § 26-10A-25(d) (collateral attacks on final adoption decrees after one year permitted only in cases of fraud or adoptee kidnapping).

When courts do intervene in the custody and care of children, the governing principle is virtually always the best interests of the child. *See, e.g., Steed*, 877 So. 2d at 604 (in making custody determinations, "[t]he overall focus of the trial court's decision is the best interests and welfare of the children"); *Baker v. Baker*, 276 Ga. 778, 781 (2003) (requiring court to apply best interests of the child standard in custody dispute between biological mother and non-biological father); *Troxel v. Granville*, 530 U.S. 57, 99 (2000) (Kennedy, J., dissenting) ("[T]he best interests of the

child standard . . . has been recognized for many years as a basic tool of domestic relations law in visitation proceedings.").

Accordingly, children have been able to rely on adoption to mean that a court will not sanction their separation from a parent without giving the parental relationship due weight and determining that that separation will serve the child's interests. This is no longer true.

The Alabama decision bypassed these safeguards, erasing the legal relationship between V.L. and her adopted children without reference to the children's welfare.[25] Under Alabama's new rule, while courts must consider children's best interests when an adoptive relationship is created, Ala. Code § 26-10A-25(b)(6), they need not consider children's welfare when an adoptive relationship is erased.

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[25] The Guardian Ad Litem appointed to represent the interests of V.L.'s children opposed E.L.'s efforts to void the adoption, telling the Alabama Supreme Court that doing so would "conflict[ ] with the children's best interests and the reality that they have known their whole lives." Brief of the Guardian Ad Litem at 3, *E.L. v. V.L.*, Ala. Case No. 1140595 (filed May 11, 2015).

B. Under the Alabama Decision, Parents Can No Longer Depend on Adoption to Ensure their Children Will Have the Legal Right to a Non-Biological Parent's Care and Support

By permitting courts to void adoptive relationships created in other states, the Alabama decision puts adoptive families at risk. Families parented by same-sex couples are more likely to be impacted than others both because they raise adopted children at higher rates than other parents and because of their need to secure legal recognition of the second parent in almost every instance.[26]

Unfortunately, the availability of marriage for same-sex couples following this Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), does not render the Alabama decision less significant. First, marriage and step-parent adoption is not a possibility for families where a parent has already died or the parents' relationship has already dissolved – the situation in which V.L. and her children find themselves. Second, the thousands of children who have been adopted via second-parent adoptions are left in doubt as to their legal relationships with their adoptive parents and what – if anything – can be

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[26] Same-sex couples are four times more likely than their different-sex counterparts to be raising an adopted child. Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute, UCLA School of Law at 1 (Feb. 2013), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf.

done to secure them. The Alabama decision undermines adoption fundamentally, freeing courts from the constraints of the Full Faith and Credit Clause in the area of law where finality and stability is most needed – children's relationships with their parents. That more parents can now marry and adopt as stepparents does not render the uncertainty and risk created by the Alabama decision tolerable.

Parents like E.L. and V.L. have relied on second-parent adoptions to give their children the security of legal relationships with both parents. Until the Alabama decision, the Full Faith and Credit Clause prevented a parent from unilaterally erasing these protections by voiding the adoption years later in a state other than the adoptive state. For example, the lives of C.R.-E. and her sister H.R.-E. were disrupted when their parents' relationship ended, but the girls were ultimately protected by the legal relationships their parents had established for them years earlier.

Born a year apart to their mothers, Lara and Kim, C.R.-E. is the biological child of Kim and was adopted by Lara, and H.R.-E. is the biological child of Lara and was adopted by Kim. The children were born and adopted in Washington state, but when Lara and Kim ended their relationship several years later, the family was living in Florida. Kim cut off C.R.-E.'s contact with both Lara and H.R.-E.

Relying on the Washington judgment, Lara turned to the Florida courts for assistance in maintaining contact with her adopted daughter. As E.L.

has done in this case, C.R.-E.'s biological mother argued that Florida should not honor the sister-state adoption and should not recognize Lara as C.R.-E.'s legal parent. The trial court agreed, reasoning that Florida was not required to give full faith and credit to the Washington adoption because adoption by same-sex couples was contrary to Florida's public policy. Florida's District Court of Appeal reversed, ruling that the trial court was required to give the Washington adoption judgment full faith and credit, regardless of public policy.[27]

Confirming Lara's parental status took three years, during which time C.R.-E. was separated from both her adoptive mother and her sister. The experience was difficult for H.R.-E., who says, "I grew up with [C.], and it was hard to understand why the courts didn't see that we were family. I care about her so much. It would be so sad if I wasn't allowed to be close with her."[28]

Now 14, H.R.-E. is grateful for the appellate court decision that recognized her sister's adoption and enabled the girls to continue their relationship:

> I was glad that the courts eventually understood that we were sisters. I get excited to

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[27] In light of the Court's directive to identify minors only by initials, Amici have not included a citation to the reported appellate decision, which includes the last names of both parents.

[28] Statement from H.R.-E. to Family Equality Council (Nov. 18, 2015).

> tell her stuff. There is a feeling of hope when I tell her stuff that I've done, that she will be proud. We are on the same team. We support each other, all the time.[29]

But the result could have been different under the Alabama decision. Like those of many other states, Washington's adoption statutes do not explicitly provide for or prohibit second-parent adoptions. Courts throughout the state grant them when it is in the child's best interest to do so. Applying the new Alabama rule, the Florida court could have independently analyzed Washington's adoption statutes. If it determined that C.R.-E.'s adoption by Lara had been granted contrary to the Florida court's view of Washington law, it could use the supposed resulting "jurisdictional" defect to avoid giving full faith and credit to the Washington adoption, ruling that Lara had, in fact, never been C.R.-E.'s parent.

As difficult and confusing as the separation from her sister and mother was for C.R.-E. at the time, the full impact of what she almost lost became clear to C.R.-E. only in the years that followed, when she experienced difficulties in her relationship with her biological mother. The difficulties escalated into a crisis. In severe emotional distress and on the verge of being abruptly withdrawn from the high school that had become a place of stability and support, C.R.-E. turned to her adoptive mother for help. Lara's

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[29] *Id.*

status as a legal parent enabled her to work with school officials and take steps to ensure C.R.-E.'s safety and well-being. C.R.-E. was able to remain in school and credits Lara's intervention with giving her the space to begin repairing her relationship with her biological mother.

> If it hadn't been for the fact of my adoption, which made Lara a legal parent, I do not know where I'd be right now. . . . I was extremely depressed, and, for some time, I was even suicidal. [But] I had two legal parents, one of whom was ready and willing to do whatever it took to protect me.[30]

Giving Lara the ability to help her child when she needed it most is no doubt what both of C.R.-E.'s mothers had in mind when Lara adopted her infant daughter as a second parent.

CONCLUSION

Families come in all shapes and sizes, and not all children have two parents in their lives. But when a child does have two parents who have chosen to commit to his or her care, support, and well-being, the law should continue to protect the child's relationship with both of them.

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[30] Statement from C.R.-E. to Family Equality Council (Nov. 18, 2015).

For children, adoption means security and permanence. This is what it should mean and what, until the Alabama decision, it always has meant. This Court should grant V.L.'s petition for writ of certiorari to restore that protection and fulfill the promise of secure relationships of children with their adoptive parents.

Respectfully submitted,

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Supreme Court of the United States

V.L., *Petitioner*
v.

E.L. AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN, *Respondents.*

On Petition for a Writ of Certiorari
to the Alabama Supreme Court

BRIEF OF GAY & LESBIAN ADVOCATES & DEFENDERS, EQUALITY ALABAMA FOUNDATION, EQUALITY FEDERATION, GEORGIA EQUALITY, HUMAN RIGHTS CAMPAIGN, IMMIGRATION EQUALITY, NATIONAL CENTER FOR TRANSGENDER EQUALITY, NATIONAL BLACK JUSTICE COALTION, NATIONAL LGBTQ TASK FORCE, PFLAG, SOUTHERN POVERTY LAW CENTER, AND STONEWALL BAR ASSOCIATION OF GEORGIA AS AMICI CURIAE IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST

Gay & Lesbian Advocates & Defenders works in New England and nationally to eradicate discrimination against lesbian, gay, bisexual, and transgender ("LGBT") people and people with HIV/AIDS from all communities, through litigation, public policy advocacy, and education.[1] GLAD has participated as counsel or amicus in numerous state cases about adoption and parenting and has served as counsel in state and federal courts in cases about the families of same-sex couples.

Equality Alabama Foundation is an Alabama nonprofit organization, with a membership exceeding 8,000 throughout the State of Alabama. It seeks, through education and advocacy, to advance equality for LGBT Alabamians where they live, work, learn, and play. Equality Alabama has worked to advance the rights of same-sex couples to marry and raise children, and has participated in Alabama courts as amicus.

Equality Federation is a partner to state-based equality organizations advocating on behalf of lesbian, gay, bisexual, transgender, and queer people. Since 1997, it has worked throughout the country with its member organizations to make

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[1] Undersigned counsel has authored this *amicus* brief in whole, and no other person or entity has funded its preparation or submission. All counsel of record were given timely notice of the intention to file this brief, and have consented in correspondence on file with the clerk.

legislative and policy advances on marriage, nondiscrimination, safe schools, healthy communities, and more.

Georgia Equality's mission is to advance fairness, safety, and opportunity for LGBT communities throughout Georgia. In its twenty-year history, it has advocated for stronger protections for parents who may face discrimination based on their sexual orientation or gender identity.

Human Rights Campaign, the largest national LGBT political organization, envisions an America where LGBT people are ensured of their basic equal rights, and can be open, honest, and safe at home, at work, and in the community. Among those basic rights is freedom to have full legal recognition of our families.

Immigration Equality is the nation's largest legal service provider for LGBT and HIV-positive immigrants. Each year, Immigration Equality provides legal advice to nearly 5,000 individuals and families, maintains an active docket of more than 550 immigration cases, and regularly appears in federal circuit courts as counsel or amicus curiae.

The National Center for Transgender Equality, founded in 2003, is dedicated to improving the lives of transgender people and their families through advocacy, education, and collaboration. NCTE works with Congress, federal agencies, and state and local advocates and stakeholders to advance public policies that will improve transgender people's lives

in areas including employment, health care, housing, and education.

The National Black Justice Coalition is dedicated to the empowerment of Black LGBT people and families. Since 2003, NBJC has provided leadership at the intersection of national civil rights groups and LGBT organizations, advocating for the unique and often overlooked challenges and needs of the African American LGBT community. NBJC envisions a world where all people are fully empowered to participate safely, openly, and honestly in family, faith, and community, regardless of race, class, gender identity, or sexual orientation.

Since 1973, the National LGBTQ Task Force has worked to build power, take action, and create change to achieve freedom and justice for LGBT people and their families. As a progressive social justice organization, the Task Force works toward a society that values and respects the diversity of human expression and identity and achieves equity for all.

PFLAG is the nation's largest LGBTQ family and ally nonprofit organization, with more than 200,000 members and supporters and 400 affiliates, including eight chapters in Alabama and eight in Georgia. PFLAG's members are parents, children, grandparents, siblings, and friends of lesbian, gay, bisexual, transgender, and queer individuals. Founded in 1972, PFLAG is committed to advancing equality and full societal affirmation of LGBTQ people through its threefold mission of support, education, and advocacy.

The Southern Poverty Law Center is a nonprofit organization founded in 1971 that has worked to make this nation's constitutional ideals a reality for everyone since its inception. SPLC's LGBT Rights Project is dedicated to fighting discrimination against the LGBT community in all its forms, and defending the rights of LGBT people and their families.

The Stonewall Bar Association of Georgia, Inc. was founded to develop a coalition of legal workers to utilize their professional expertise to support the rights of lesbian, gay, bisexual, and transgender people and oppose discrimination based on sexual or gender orientation, and to support individuals and organizations that make contributions to improving the quality of life for LGBT Georgians.

SUMMARY OF ARGUMENT

This case raises compelling grounds for review by this Court. Children and families nationwide rely on the security, stability, and predictability conferred by adoption and parentage judgments. Those judgments confirm and dignify the bonds formed between parent and child, encourage nurturing and secure relationships, and promise stability to families wherever they go. If children cannot rely on the filial bond with their parents, they, their parents, and society will all suffer harm.

Judgments of parentage and adoption, and the promise of love and nurturing that they carry, cannot be ephemeral in a humane society, and the Full Faith and Credit Clause must ensure that they are not. As this case demonstrates, if the Full Faith and Credit Clause can be as easily circumvented as it was by the Alabama Supreme Court, the parent-child relationship will be only as strong as the credit it will be given in the most restrictive states. Such a result will weaken adoption and parentage judgments nationwide.

This case is a part of our continuing national conversation about legal respect for the relations formed by and between same-sex couples, including those who raise children. These parents and their children rely on adoption and parentage judgments to protect their families. But state law still varies as to how, when, or even if these parent-child relationships will be given legal respect. According full faith and credit to adoption and parentage judgments that these families have obtained is

critical to their security and integrity given continuing objections to the families of same-sex couples.

The Alabama Supreme Court's disregard for the Full Faith and Credit Clause weakens the bonds that join our nation and our families. The Alabama court's ruling harms our most vulnerable citizens – our children – who need security and stability more than anyone else. This Court has a rich tradition of granting certiorari to ensure that full faith and credit is given to family-related judgments in times when family law differs from state to state. It should do so here.

ARGUMENT

I. Full Faith and Credit Is Critical for Same-Sex Couples and Their Children.

Like heterosexual couples, many same-sex couples share the basic human desire to have and nurture children. As this Court recognized in *Lawrence v. Texas*, "[p]ersons in a homosexual relationship... seek autonomy" for "personal decisions relating to marriage... family relationships, child rearing, and education." 539 U.S. 558, 574 (2003). Children of those families also desire "to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013). Ensuring that full faith and credit is given to adoption and parentage judgments is crucial given the long history of discrimination against same-sex parents and the patchwork of state laws that confronts them.

A. Same-Sex Couples Rely on Adoption and Parentage Judgments to Protect their Families.

Same-sex couples with children are a part of the landscape of our nation's families. "[S]ame-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015). More than 125,000 households headed by same-sex couples are raising

nearly a quarter of a million children across the United States.[2] Including children raised by single parents, almost two million children are being raised by gay or lesbian parents in the United States.[3]

There are same-sex couples raising children in virtually every county in the United States, with the South having some of the highest rates of childrearing among same-sex couples.[4] According to Census data, in Georgia and Alabama alone, over 5,500 households headed by same-sex couples have children under age 18.[5] Same-sex couples of color are more likely than white couples to be raising children.[6]

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[2] Gary J. Gates, The Williams Institute, *LGBT Parenting in the United States* (2013), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf.

[3] Am. Acad. of Pediatrics, *Policy Statement, Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, 131 Pediatrics 827 (2013), *available at* http://pediatrics.aappublications.org/content/131/4/827.full.pdf.

[4] Gates, *supra* note 2.

[5] *See* U.S. Census Bureau, *Supplemental Table: Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children: 2010 Census and 2010 American Community Survey*, http://www.census.gov/hhes/samesex/files/supp-table-AFF.xls (last visited Dec. 15, 2015).

[6] Movement Advancement Project et al., *LGBT Families of Color: Facts At A Glance* 2 (2012), *available at*

Same-sex couples often form their families through adoption. These couples are four times more likely than their different-sex counterparts to be raising an adopted child.[7] Thirteen percent of same-sex parents have adopted a child.[8] In total, more than 16,000 same-sex couples are raising about 22,000 adopted children in the United States.[9]

Legal respect for the parent-child relationship often springs from state adoption and parentage laws. "Most States have allowed gays and lesbians to adopt, either as individuals or as couples, and many adopted and foster children have same-sex parents." *Obergefell*, 135 S. Ct. at 2600. This provides "powerful confirmation from the law itself that gays and lesbians can create loving, supportive families." *Id.*

Adoption and parentage judgments provide children and families the stability they need. Adoption, like marriage, "affords the permanency and stability important to children's best interests." *Id.* Legal respect for parent-child relationships provides security to children and confers dignity on the family and the parent-child relationship. *See Lehman v. Lycoming Cnty. Children's Servs. Agency*,

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http://nbjc.org/sites/default/files/lgbt-families-of-color-facts-at-a-glance.pdf.

[7] Gates, *supra* note 2.

[8] *Id.*

[9] *Id.*

458 U.S. 502, 513 (1982) ("[C]hildren require secure, stable, long-term, continuous relationships with their parents.... There is little that can be as detrimental to a child's sound development as uncertainty over" that relationship.). An adoption or a finding of parentage confers legal and social meaning on the child's bonds with his or her parent and should be respected no matter where the child or parent may go. *See Windsor*, 133 S. Ct. at 2694 (discussing benefits to children of legal recognition of marriages); *Obergefell*, 135 S. Ct. at 2600 (same).

Thus, adoption and parentage judgments must be respected to ensure permanency and stability. As one state appellate court has recently emphasized in giving full faith and credit to an out-of-state adoption:

> The importance of finality in the lives of the children involved in the adoption process is so obvious as to require little elaboration. One of the most crucial elements of a healthy childhood is the availability of a stable home in which each family member has a secure and definite place.... [If full faith and credit is denied,] such children – as well as their adoptive families – would be forever relegated to a state of legal limbo.... Clearly, such a result... cannot be tolerated in a legal system that concerns itself with humane values....

Kemp & Assocs. v. Chisholm, 162 So. 3d 172, 178 (Fla. Dist. Ct. App. 2015) (quoting *In re Robert O. v. Russell K.*, 604 N.E.2d 99, 106–07 (N.Y. 1992) (Titone, J., concurring)).

For this reason, Georgia's adoption statute recognizes that state's "interest in... providing stable and permanent homes for adoptive children.... Adoptive children have a right to permanence and stability in adoptive placements." Ga. Code Ann. § 19-8-12(a)(1), (2). *Accord* Idaho Code Ann. § 16-1501A(2)(a), (c); Mont. Code Ann. § 42-1-108(2)(b), (d) (2015); S.C. Code Ann. § 63-9-810; Utah Code Ann. § 78B-6-102(5)(a), (c).

Legal respect for the parent-child relationship confers benefits on children and parents alike. It allows parents to obtain family health insurance covering the children and to make medical decisions for them. *See Adoption of Tammy*, 619 N.E.2d 315, 320 (Mass. 1993); *In re Jacob*, 660 N.E.2d 397, 399 (N.Y. 1995).[10] Parents without a legal relationship to their children may not be able to claim their children as dependents for tax purposes. *See* 26 U.S.C. § 152(f)(1).

If the parents' relationship dissolves, legal parentage protects children from being "denied the affection of a functional parent who has been with them since birth." *Adoption of Tammy*, 619 N.E.2d at 320. Without an adoption or parentage judgment, parents and their children risk being denied visitation. In some cases, an adoptive parent may seek to ***avoid*** responsibility for the child after a

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[10] *See generally* Movement Advancement Project et al., *All Children Matter: How Legal and Social Inequalities Hurt LGBT Families* 79–80, 87 (2011), *available at* http://www.lgbtmap.org/file/all-children-matter-full-report.pdf.

separation, and an adoption or parentage judgment can ensure that the child will receive support. *E.g.*, *Elisa B. v. Superior Court*, 117 P.3d 660, 669 (Cal. 2005).

In the event of a parent's death, an adoption or parentage judgment allows a child to obtain Social Security benefits,[11] to inherit from family trusts,[12] to inherit by intestate succession,[13] to bring wrongful death claims,[14] and to receive life insurance benefits.[15] Legal recognition of the surviving parent can ensure that the child can remain in that parent's custody after tragedy.[16] Legal respect for the parent-child relationship is so important for children's well-being that many medical and professional

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[11] *Adoption of Tammy*, 619 N.E.2d at 320; *In re Jacob*, 660 N.E.2d at 399; 42 U.S.C. §§ 402(d), 416(e).

[12] *Adoption of Tammy*, 619 N.E.2d at 317, 320.

[13] *In re Jacob*, 660 N.E.2d at 399; *Adoption of Tammy*, 619 N.E.2d at 320.

[14] *In re Jacob*, 660 N.E.2d at 399.

[15] *Id.*

[16] *See* Brief for The Donaldson Adoption Institute, et al. as Amici Curiae Supporting Petitioners at 18, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (No. 14-556); *Adoption of Tammy*, 619 N.E.2d at 320 n.9.

organizations have long supported legal respect for families headed by same-sex couples.[17]

B. Full Faith and Credit Ensures the Stability and Reliability of Judgments Given the Variance in State Law.

In many same-sex families, the adults set out to form a family by, for example, fostering children in state care, adopting a child, or using medically available assisted reproductive services. Before the nationwide availability of marriage in *Obergefell*, and with it the possibility of step-parent adoption or

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[17] American Academy of Pediatrics: Am. Acad. of Pediatrics, *supra* note 3, at 828;

American Medical Association: Am. Med. Assoc., *H-60.940: Partner Co-Adoption*, http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbt-advisory-committee/ama-policy-regarding-sexual-orientation.page;

American Psychological Association: Am. Psychological Assoc., *Sexual Orientation, Parents, and Children* (2004), http://www.apa.org/ about/policy/parenting.aspx;

American Psychiatric Association: Am. Psychiatric Assoc., *Adoption and Co-parenting of Children by Same-sex Couples: Position Statement* (Nov. 2002);

National Association of Social Workers: Nat'l Assoc. of Soc. Workers, *Social Work Speaks: National Association of Social Workers Policy Statements*, 2003-2006 (6th ed.);

American Association of Family Physicians: Am. Assoc. of Family Physicians, *Children's Health* (2002), http://www.aafp.org/ about/policies/all/children-health.html.

joint adoption as a married couple, often there was only one legal parent in a family headed by a same-sex couple: the one adoptive parent or the birth parent.

During this period, states developed varying approaches to the children of same-sex couples. At least twelve states and the District of Columbia have now, by statute or appellate court decision, authorized second-parent adoption, through which an unmarried adult co-parent may adopt the child of his or her partner.[18] Trial or county courts in other states have also recognized such adoptions.[19]

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[18] California: *Sharon S. v. Superior Court*, 73 P.3d 554 (Cal. 2003); Colorado: Colo. Rev. Stat. § 19-5-203(1)(d.5); Connecticut: Conn. Gen. Stat. § 45a-724(a)(3); District of Columbia: *In re M.M.D.*, 662 A.2d 837 (D.C. 1995); Idaho: *In re Doe*, 326 P.3d 347 (Idaho 2014); Illinois: *In re K.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995); Indiana: *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004); Maine: *Adoption of M.A.*, 930 A.2d 1088 (Me. 2007); Massachusetts: *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); Montana: Mont. Code Ann. § 42-4-302(2); New Jersey: *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995); New York: *In re Jacob*, 660 N.E.2d 397 (N.Y. 1995); Pennsylvania: *In re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002); Vermont: *In re B.L.V.B.*, 628 A.2d 1271 (Vt. 1993); Vt. Stat. Ann. tit. 15A, § 1-102.

[19] *See generally* Am. Civil Liberties Union, *Map of States Where Same-Sex Couples Are Able to Get Joint or Second Parent Adoption*, https://www.aclu.org/map-states-where-same-sex-couples-are-able-get-joint-or-second-parent-adoption (last visited Dec. 16, 2015).

Courts allowing such adoptions have resolved disputed questions of statutory interpretation based on the language and purposes of the adoption statutes in accord with established canons of construction. For example, in *In re B.L.V.B.*, 628 A.2d at 1273, the Vermont Supreme Court ruled that the state's adoption statutes must be interpreted to "avoid results that are irrational, unreasonable, or absurd." The court continued,

> [W]e cannot conclude that the legislature ever meant to terminate the parental rights of a biological parent who intended to continue raising a child with the help of a partner. Such a narrow construction would produce the unreasonable and irrational result of defeating adoptions that are otherwise indisputably in the best interests of children.

Id. at 1274. Many other states have reached similar conclusions.[20]

Other states have allowed same-sex couples to obtain parentage judgments through state parentage laws,[21] which empower courts to declare the

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[20] *See, e.g.*, *Sharon S.*, 73 P.3d at 561; *Adoption of Tammy*, 619 N.E.2d at 321; *In re Jacob*, 660 N.E.2d at 399, 404; *In re Adoption of Two Children by H.N.R.*, 666 A.2d at 538; *In re Adoption of Infant K.S.P.*, 804 N.E.2d at 1257.

[21] Many of these laws are modeled on the Uniform Parentage Act, first promulgated in 1973. *See generally* Nancy D. Polikoff, *A Mother Should not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the*

existence of legal parent-child relationships based on facts such as birth, marriage, or "holding out" a child as one's own. *See, e.g.*, *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005); *Chatterjee v. King*, 280 P.3d 283, 288 (N.M. 2012); *see also In re the Parental Responsibilities of A.R.L.*, 318 P.3d 581 (Colo. App. 2013); *Charisma R. v. Kristina S.*, 96 Cal. Rptr. 3d 26 (Cal. Ct. App. 2009).

While most state appellate courts considering second-parent adoptions have concluded that these adoptions are permissible, some state courts (including Alabama's) have held that second-parent adoptions by an unmarried same-sex couple are not permissible under those states' adoption statutes, even where the statutes themselves may be similar to those interpreted more broadly in other states.[22] This divergence among state laws has the potential to wreak havoc unless the states accord full faith and credit to one another's adoption and parentage judgments

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Twenty-First Century, 5 Stan. J. C.R. & C.L. 201, 211, 217–18 (2009).

[22] Alabama: *In re K.R.S.*, 109 So. 3d 176 (Ala. Ct. App. 2012). *See also* Kentucky: *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ky. Ct. App. 2008); North Carolina: *Boseman v. Jarrell*, 704 S.E.2d 494 (N.C. 2010); Nebraska: *B.P. v. State* (*In re Adoption of Luke*), 640 N.W.2d 374 (Neb. 2002); Ohio: *In re Adoption of Doe*, 719 N.E.2d 1071 (Ohio Ct. App. 1998); Wisconsin: *Georgina G. v. Terry M.* (*In the Interest of Angel Lace M.*), 516 N.W.2d 678 (Wis. 1994).

C. Full Faith and Credit Is Particularly Important for Same-Sex Couples Because of Continued Objections to Their Families.

The Alabama Supreme Court's decision in this case must be viewed against the backdrop of objections to same-sex couples' relationships and parenting. Objectors have long argued that the law should not recognize the relationships between people of the same sex and should not recognize their status as parents.[23] These objections featured in arguments, already familiar to this Court, that parenting by a biological mother and father is "optimal," and that same-sex couples should, therefore, be disqualified from marriage. *See, e.g.*, Brief for Respondent Michigan at 39–40, 46, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (No. 14-571). The State of Alabama was among the objectors, asserting its interest in promoting

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[23] *See, e.g.*, Lynn D. Wardle, *The Potential Impact of Homosexual Parenting on Children*, 1997 U. Ill. L. Rev. 833, 838 (1997) (acknowledging same-sex couples as partners or parents "shift[s]... the legal and social assumptions and legal model of parenting"); Lynn D. Wardle, *Sexual Orientation: Law and Policy: Parenthood and the Limits of Adult Autonomy*, 24 St. Louis U. Pub. L. Rev. 169, 178 (2005) (adoptions by same-sex couples "redefine parenthood" from a relationship that requires "commitment of both men and women together to the best interests of children" to one furthering the "child-rearing interests of any one or more autonomous adults"); *id.* at 187–88 (such adoptions deprive children of gender-differentiated parenting).

> ties of kinship between children and both of their biological parents because, in general, those parents together are best suited to provide optimal care for their children.... In contrast, children raised in same-sex households are necessarily raised without one or both biological parents in the home.

Brief for Alabama as Amici Curie Supporting Respondents at 5, *Obergefell v. Hodges*, 135 S. Ct. 2584 (No. 14-556).

These objections found expression in bans on gays and lesbians adopting or fostering children over the last several decades. Florida enacted an adoption ban in 1977 [24] That ban, originally upheld by the Eleventh Circuit in *Lofton v. Sec'y Dept. of Children & Family Serv's*, 358 F.3d 804, 827 (11th Cir. 2004), was invalidated on state constitutional grounds only five years ago. *Fla. Dep't of Children & Families v. X.X.G.*, 45 So. 3d 79 (Fla. Dist. Ct. App. 2010). In 1985, Massachusetts instituted a policy of foster care placement in "traditional family settings," and its Department of Social Services removed two boys from their foster care placement with a gay couple.[25] This led neighboring New Hampshire to

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[24] David L. Chambers & Nancy D. Polikoff, *Family Law and Gay and Lesbian Family Issues in the Twentieth Century*, 33 Fam. L.Q. 523, 534 (1999).

[25] Philip W. Johnston, *Policy Statement on Foster Care* (May 24, 1985), *reprinted in* Boston Globe, May 25, 1985, at 24; Chambers & Polikoff, *supra* note 24, at 533, 536–37.

pass the first law banning gay people from serving as foster or adoptive parents or operating a day care facility, a ban that was upheld by the New Hampshire Supreme Court. *Opinion of the Justices*, 525 A.2d 1095 (N.H. 1987).[26] These bans, not reversed until the 1990s, were fueled, at least in part, by fears of AIDS and stereotypes of gay people as predators.[27]

From the mid-1990s on, similar proposed bans were defeated in seven states but passed in others.[28] For example, Utah law provides that a person in a cohabiting and non-marital sexual relationship may not adopt. Utah Code Ann. § 78B-6-117(3). This foreclosed same-sex couples from adopting until they recently became able to do so as married couples. An Arkansas regulation forbidding foster parenting whenever a gay person was in the home, adopted in 1991, was invalidated less than a decade ago in *Department of Human Services v. Howard*, 238 S.W.3d 1 (Ark. 2006). The Arkansas courts also struck a subsequent ballot initiative forbidding adoption and foster care by an unmarried person

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[26] The Massachusetts policy was changed in 1991, and the New Hampshire law was repealed in 1999. *See* H.R. 90, 1999 Sess. (N.H. 1999), *available at* http://gencourt.state.nh.us/SofS_Archives//1999/house/HB90H.pdf.

[27] *See, e.g.*, Ralph Jimenez, *N.H. Near Repeal of Antigay Provision, Foster Parenting, Adoption at Issue*, Boston Globe, Apr. 23, 1999, at B1 (quoting local officials about "AIDS hysteria" and fears of child molestation as animating the ban).

[28] Chambers & Polikoff, *supra* note 24, at 540–41.

cohabiting with a partner. *Ark. Dept. Human Servs. v. Cole*, 380 S.W.3d 429 (Ark. 2011). Mississippi's ban on adoption by same-sex couples, enacted in 2015, remains in place. *See* Miss. Code. Ann. § 93-17-3(5) ("Adoption by couples of the same gender is prohibited.").

Sexual orientation has also been used to deny or limit gays' and lesbians' custodial or visitation rights upon divorce or separation. Through the 1970s and 1980s, gay and lesbian litigants lost more appellate visitation and custody cases than they won.[29] Some state courts used sexual orientation to deny parental rights altogether. *See, e.g.*, *Pulliam v. Smith*, 501 S.E.2d 898 (N.C. 1998) (ordering reinstatement of judgment stripping father of custody because he was living with a partner of the same sex); *Bottoms v. Bottoms*, 457 S.E.2d 102 (Va. 1995) (awarding custody of two-year-old to grandmother because mother was a lesbian and therefore unfit).

Even though most state parenting bans have been repealed or overturned, erroneous stereotypes linger. Because Alabama's courts are the focus of this case, a snapshot of the climate in that state and its courts is illuminating. The Alabama Supreme Court has on several occasions denied gay and lesbian parents child custody and visitation based, in part, on the rationale that these parents' sexual orientation made them unsuitable. *See, e.g.*, *Ex parte H.H.*, 830 So. 2d 21, 25–26 (Ala. 2002)

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[29] *See* Chambers & Polikoff, *supra* note 24, at 533, 536–37.

(deferring to trial court's assessment of insufficient basis for lesbian mother's proposed modification of custody award); *id.* at 33–35 (Moore, C.J., concurring) ("Homosexuality is strongly condemned in the common law because it violates both natural and revealed law.... The common law designates homosexuality as an inherent evil, and if a person openly engages in such a practice, that fact alone would render him or her an unfit parent."); *Ex parte D.W.W.*, 717 So. 2d 793, 796 (Ala. 1998) ("Exposing her children to such a lifestyle, one that is illegal under the laws of this state and immoral in the eyes of most of its citizens, could greatly traumatize them."); *Ex parte J.M.F.*, 730 So. 2d 1190, 1196 (Ala. 1998) (transferring custody from lesbian mother and her partner to re-married father because "[w]hile the evidence shows that the mother loves the child and has provided her with good care," she was exposing her child "to a lifestyle" that was "neither legal in this state, nor moral in the eyes of most of its citizens").

In addition, the Alabama courts have shown a stunning disrespect for federal court judgments, even judgments of this Court, that broaden protections available to same-sex couples. In January 2015, after a federal district court ruled that Alabama's marriage ban was unconstitutional in *Searcy v. Strange*, 81 F Supp. 3d 1285 (S.D. Ala. 2015) and *Strawser v. Strange*, 2015 U.S. Dist. LEXIS 8439 (S.D. Ala. Jan. 26, 2015), and while an application for a stay was pending in this Court, the Chief Justice of the Supreme Court of Alabama wrote a letter to the Alabama Governor pledging to uphold the state's constitutional marriage

amendment, which banned marriages between same-sex couples. The Alabama Chief Justice then ordered probate judges and state officials not to "issue or recognize a marriage license" contrary to Alabama law.[30] The next day, after this Court denied a stay, marriage licensing began in several counties, only to be halted by a March 3, 2015 ruling by the Alabama Supreme Court prohibiting such licenses statewide. *Ex parte State ex rel. Ala. Policy Inst.*, 2015 Ala. LEXIS 33, at *148–49 (Ala. Mar. 3, 2015) (per curiam).

Even *Obergefell* did not settle matters for the Alabama Supreme Court.[31] On June 29, 2015, that court issued an order inviting parties to file briefs on the effect of *Obergefell* on the Alabama court's orders

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[30] Chris Geidner, *With U.S. Supreme Court Silent, Alabama Chief Judge Aims to Stop Same-Sex Marriages*, BuzzFeed (Feb. 8, 2015), http://www.buzzfeed.com/chrisgeidner/with-us-supreme-court-silent-alabama-chief-justice-aims-to-s (includes the Order).

[31] The Chief Justice of the Alabama Supreme Court has publicly stated that he is "engaged in a conflict with" this Court, calling *Obergefell* "a horrendous decision" that "contradicts the Constitution." Randall Terry, *Episode 699 Chief Justice Roy Moore Interview on Supreme Court's Abuse of Power* (July 7, 2015), https://m.youtube.com/watch?v=ATaYTPGjY8U at 00:17. He later elaborated: "Just because he [Justice Kennedy] writes it doesn't make it law...." *Id.* at 28:39.

and suggesting that its earlier March ruling was still in effect.[32]

It was not until July 14, in response to a lawsuit, that the Alabama Attorney General confirmed that *Obergefell* was binding on the state.[33] Since then, a probate judge has requested a declaration that he be exempted from issuing marriage licenses to same-sex couples.[34] In October, activists opposed to marriage equality filed yet another motion in the Alabama Supreme Court urging the judiciary to defy *Obergefell*, this time joined by an Alabama probate judge. *Ex Parte State ex rel. Ala. Policy Inst. v. Alan L. King*, No. 1140460 (Ala. Filed Oct. 5, 2015).

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[32] *Ex parte State ex rel. Ala. Policy Inst.*, No. 1140460 (Ala. June 29, 2015) (Corrected Order), *available at* https://localtvwhnt.files.wordpress.com/2015/06/1140460-order.pdf. Later statements from the Alabama Chief Justice suggested that the court was not advising about local officials' obligations to issue licenses. Chris Geidner, *Alabama Chief Justice's Comments Cause Confusion for Marriage Equality in the State*, BuzzFeed (July 1, 2015), http://www.buzzfeed.com/chrisgeidner/alabama-supreme-court-order-causes-confusion-for-marriage-eq.

[33] Kent Faulk, *Alabama will grant equal rights to married gay couples, lawyers say*, AL.com (July 14, 2015), http://www.al.com/news/birmingham/index.ssf/2015/07/state_agencies_will_grant_same.html.

[34] Kent Faulk, *Alabama judge asks not to have to wed same-sex couples, rejects 'license to engage in sodomy'*, AL.com (Sept. 16, 2015), http://www.al.com/news/birmingham/index.ssf/2015/09/probate_judge_asks_alabama_sup.html.

Some Alabama probate court judges still refuse to issue marriage licenses to otherwise qualified same-sex couples. In fact, Alabama accounts for the vast majority of counties nationwide refusing to grant such licenses. Over 75% of the thirteen counties nationally that do not grant such licenses are in Alabama.[35] About 15% of Alabama's counties refuse to grant same-sex marriage licenses, compared to near-universal compliance in the rest of the country.[36] As a result, almost 6% of Alabama's population lives in a county that refuses to issue same-sex marriage licenses, dwarfing the nationwide rate of 0.1%.[37]

This history demonstrates that hostility towards gay people is still entrenched in Alabama and its courts. This state of affairs makes it even more essential to enforce the Full Faith and Credit Clause to ensure that local stereotypes do not undermine judgments upon which children and families have relied.

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[35] Ballotpedia, *Local government responses to Obergefell v. Hodges* (Oct. 29, 2015), https://ballotpedia.org/Local_government_responses_to_Obergefell_v._Hodges.

[36] *Id.*

[37] *Id.*

II. Certiorari Should Be Granted to Undo the Damage the Alabama Court Has Done to Adoption and Parentage Judgments Nationwide.

The patchwork of state laws affecting the children of same-sex parents creates a grave threat to the security of children of same-sex couples when they move from a state that respects their family arrangements to one that does not. *See supra* Section I.A. The Alabama court's holding typifies this threat and casts doubt on the consistency and predictability of adoption and parentage judgments nationwide.[38] If this Court allows the Alabama court's judgment to stand, dissatisfied parents or even third parties will be emboldened to challenge sister-state adoption judgments with which they disagree. For example, parents seeking to avoid adoption and parentage judgments could, after separation, move to Alabama and make the same arguments made by Respondent. Many adoption and parentage judgments would be worth only the respect that Alabama or other restrictive states would accord them: none at all. The result would be a back-door revival of the discredited "public policy exception" to the principle of full faith and credit. *See Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) (there is "no roving public policy exception to the full faith and credit due judgments").

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[38] Amici concur with Petitioner's analysis of the Full Faith and Credit Clause and Georgia adoption law indicating that the Alabama court disregarded both.

Such a result would be disastrous. A parent-child relationship that should carry the promise of stability and security should not be nullified by relocation. The parent-child bond does not flicker on and off as state lines are crossed. As this Court explained in *Obergefell*:

> Being married in one state but having that valid marriage denied in another is one of "the most perplexing and distressing complication[s]" in the law of domestic relations. Leaving the current state of affairs in place would maintain and promote instability and uncertainty. For some couples, even an ordinary drive into a neighboring State to visit family or friends risks causing severe hardship in the event of a spouse's hospitalization while across state lines. In light of the fact that many states already allow same-sex marriage... the disruption caused by the recognition bans is significant and ever-growing.

135 S.Ct. at 2607 (first alteration in original) (quoting *Williams v. North Carolina*, 317 U.S. 287, 299 (1942)). Those concerns apply with even more force to adoptions, given the vulnerability of children, their dependency on the parent-child bond, and their need for security and stability. Once a court issues a judgment of adoption or parentage, parents, children, and society must be able to count on that judgment. The Alabama decision means they no longer can.

Granting certiorari is also consistent with this Court's precedent. This Court has a rich history of granting certiorari to define the contours of the Full Faith and Credit Clause in the context of family law. As views on divorce evolved throughout the early-to-mid-20th century, a divide developed among the states, with some favoring restrictive divorce laws and others favoring permissive ones. During that time, this Court considered several cases to refine the scope of the Full Faith and Credit Clause as applied to divorce, alimony, and other rights. *See, e.g.*, *Atherton v. Atherton*, 181 U.S. 155 (1899); *Williams v. North Carolina* (*Williams I*), 317 U.S. 287 (1942); *Williams v. North Carolina* (*Williams II*), 325 U.S. 226 (1945); *Coe v. Coe*, 334 U.S. 378 (1948); *Estin v. Estin*, 334 U.S. 541 (1948); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

In granting certiorari in and deciding these cases, the Court recognized the importance in the family law context of the stability and predictability that the Full Faith and Credit Clause ensures. As Justice Douglas wrote for the Court, if marital status were not subject to "the essential function of the full faith and credit clause," "a rule would be fostered which could not help but bring considerable disaster to innocent persons and bastardize children hitherto supposed to be the offspring of lawful marriage." *Williams I*, 317 U.S. at 301 (internal quotations omitted); *see also Obergefell*, 135 S. Ct. at 2607 (quoting *Williams I*, 317 U.S. at 299). Thus this Court has emphasized the "obvious importance" of enforcing the Full Faith and Credit Clause in the context of family relations. *Williams II*, 325 U.S. at 227; *see also Sherrer v. Sherrer*, 334 U.S. 343, 356

(1948); (noting that "vital interests" were involved); *Johnson v. Muelberger*, 340 U.S. 581, 583–84 (1951) (case raised "important" issues); *Sutton v. Lieb*, 342 U.S. 402, 405 (1952) (same).

The Court has emphasized that "[t]he Full Faith and Credit Clause is not to be applied, accordion-like, to accommodate our personal predilections." *Estin*, 334 U.S. at 545–46. If that admonition is to have any meaning, this Court must grant certiorari to define and enforce the Full Faith and Credit Clause in times like these, when state laws are in conflict, and there is a risk that policy preferences will override the Constitutional guarantee of full faith and credit. *See* App. 31a (concurring opinion below opining that Alabama "has a legitimate interest in encouraging that children be adopted into the optimal family structure, *i.e.*, one with both a father and a mother.").

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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IN THE
Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

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INTEREST OF *AMICI CURIAE*[1]

Amici are law professors who specialize in family law and who have previous published on, or have interest in, the adoption rights that are threatened in this case. *Amici* have no personal stake in the outcome of this case, but have an interest in seeing that family law—especially adoption law—develops in a way that will protect the rights of the non-biological adoptive parents and the children involved.

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part, that no counsel or a party made a monetary contribution intended to the preparation or submission of this brief and no person other than *amici curiae* or their counsels made a monetary contribution to its preparation or submission.

Pursuant to Supreme Court Rule 37.2, the Respondents and the Petitioners received at least 10-days' notice of the intent to file this brief under the Rule, each party has consented to the filing of this brief, and copies of the consents are on file with the Clerk of the Court.

ARGUMENT

The Alabama Supreme Court's ruling refusing to recognize and enforce an adoption decree entered eight years ago by a Georgia court undermines the finality of adoption judgments and sets a dangerous precedent that jeopardizes the welfare of children and the stability of their adoptive families. *Amici* urge the Court to grant certiorari in order to reverse the Alabama court's anomalous and harmful decision.

I. Every State Provides for the Finality of Adoption Decrees, Which Have Important and Far-Reaching Consequences.

The Supreme Court should grant certiorari because of this case's potential to wreak havoc on the finality of adoption orders. Finality of the adoption decree is essential to the concept of adoption. It is what distinguishes adoption from legal relationships that are easily formed but easily dissolved, such as temporary custody, fostering and guardianship. The State, in its *parens patriae* role, grants finality to honor and support the parent-child bonds of adoption and recognize the adoptive family as legally coequal to the biological family. It is crucial – to adoptive parents, biological parents, and most especially, to the adopted children – that a final decree is really final.

A. Laws in Every State Reflect the Important Public Policy of Finality of Adoption Decrees.

Adoption laws of every state, without exception, endorse and protect the integrity of the adoptive family. *See* DOUGLAS E. ABRAMS & SARAH E. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 707 (3d. ed. 2007). Once the adoption decree is final, the law extends to the adoptive family the same legal and constitutional protections as any other family. *See Smith v. Org. of Foster Families for Equality and Reform*, 431 U.S. 816, 844 n.51 (1977) (noting that "[a]doption... is recognized as the legal equivalent of biological parenthood). Family members can be secure in knowing the parent-child relationship can only be severed in cases where a court finds clear and convincing evidence of parental unfitness, just as in cases involving biological children. *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982). While adoption decrees can be challenged for limited periods of time, state laws typically recognize only a few grounds for such challenges, such as fraud, duress, incapacity, and failure to notify the biological parents. JOAN HOLLINGER, ADOPTION LAW & PRACTICE § 8.02 (2015), Lexis-Nexis.

The Uniform Adoption Act (UAA) also supports this important policy. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994). http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf. The UAA reflects a consensus among the most highly respected and

authoritative scholars on the importance of finality in adoption.

The UAA repeatedly stresses the importance of finality of adoptions. "A basic policy of this Act is to facilitate the completion of consensual adoptions, expedite the handling of contested adoption or termination proceedings, and *secure the finality of decrees of adoption* " NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994), http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf (emphasis added). UAA §3-706, entitled "Finality of Decree", states that a "decree of adoption is a final order for purposes of appeal when it is issued and becomes final for other purposes upon the expiration of the time for filing an appeal, if no appeal is filed, or upon the denial or dismissal of any appeal filed within the requisite time." *Id.* The UAA also proposes a six-month limitation for any challenge whatsoever to a final decree of adoption. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, *§ 3-707: Challenges to Decree in* 91 UNIFORM ADOPTION ACT (1994), http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf. State laws in accordance with this recommendation include Georgia and Vermont. O.C.G.A. § 19-8-18; 15A V.S.A. § 3-706(c); *see also* Ala. Code 26-10A-25(d) ("A final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any."). Among the states that have adopted a version of the Uniform Adoption Act are Arkansas, Louisiana, Montana, North Dakota, Ohio and Oklahoma. *C.V.*

v. J.M.J., 810 So.2d 692, 699 n.1 (Ala. Civ. App. 1999) *rev'd on other grounds sub nom. Ex parte C.V.*, No. 1981316, 2000 WL 1717011 (Ala. Nov. 17, 2000) *opinion withdrawn and superseded on reh'g*, 810 So. 2d 700 (Ala. 2001).

In addition to the UAA, federal, state and international laws have expressed the policy of finality in decrees establishing parental rights and responsibilities generally by requiring recognition of home state custody determinations and implementing interstate rules for the uniform enforcement of child support judgments. *See* Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000); O.C.G.A. § 19-9-40 *et. seq.* (Uniform Child Custody Jurisdiction and Enforcement Act); O.C.G.A. § 19-11-100 (Uniform Interstate Family Support Act); Hague Convention on the Civil Aspects of International Child Abduction (Convention), Oct. 24, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99–11.

B. Important and Far-Reaching Consequences and Benefits Flow from Final Adoption Decrees.

Shortly after an adoption decree is entered, in every state, they are insulated from collateral and direct challenges through combination of limits on grounds for challenges and limits on the time for bringing a challenge. For instance, in Georgia, adoption decrees cannot be challenged more than six months after their entry. O.C.G.A. § 19-8-18; *see also* Code of Ala. § 26-10A-26 (requiring that appeals be filed within fourteen days of entry of adoption decree). Once that adoption decree is finalized, the

law treats the relationship between adoptive parents and children as equivalent to that of biological parents and children. *See, e.g.*, O.C.G.A. § 19-8-9(a)(2) ("The adopted individual shall enjoy every right and privilege of a biological child of that petitioner."); Code of Ala. § 26-10A-29 ("After adoption, the adoptee shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation, including the right of inheritance."); *Ex Parte Bronstein*, 434 So. 2d 780, 782 (Ala. 1983) ("overall policy" of the adoption statute is "to treat adopted children in all respects as natural children"). The law entitles adoptive children to inherit under the same laws as biological children. O.C.G.A. § 19-8-9(a)(2); Code of Ala. § 26-10A-29. Federal law entitles adoptive children to the same social security benefits as biological children. 42 U.S.C. § 402(d). Thus, adoptive children and biological children are afforded the same legal rights.

Consequently, an adoptive parent is treated no differently than if he or she had been the biological parent of the adopted child, and the law places upon adoptive parents the same responsibilities as biological parents, including to provide adequate care for the child, and to pay child support. *E.g.*, O.C.G.A. § 19-11-3(12) (defining "parent" as "natural or adoptive" for purposes of the Child Support Recovery Act). In particular, in those adoptions where one biological parent co-parents with an adoptive parent, a common adoption family structure, the adoptive parent stands on equal footing with the biological parent when it comes to

custody and visitation in the event of a subsequent separation or divorce. *Steed v. Steed*, 877 So. 2d 602, 605-606 (Ala. Civ. App. 2003) (husband who adopted wife's child "stands on equal footing with the mother because he legally adopted the daughter"); *Hastings v. Hastings*, 291 Ga. 782, 794 (2012) ("[A]n adoptive parent stands on the same footing and has the same rights and obligations as a biological parent.").

II. Undermining the Finality of an Adoption Decree is Detrimental to Children and their Families.

In *V.L. v. E.L.*, both parents had lived with and co-parented their children since birth and the children have formed deep attachments to both of their parents. *Pet. for Certiorari*, at 4-7

The bond between parent and child is the most fundamental of human relationships. Barbara Woodhouse, *Of Babies, Bonding, and Burning Buildings: Discerning Parenthood In Irrational Action*, 81 Va. L. Rev. 2493, 2509 (1995). While an increasing number of marriages end in divorce, parent-child relationships are intended to be ones that last a lifetime. Barbara Woodhouse, *Waiting for Loving: The Child's Fundamental Right to Adoption*, 34 Cap. U. L. Rev. 297, 318-19 & n.136.

The parent-child bond enjoys constitutional as well as statutory protection, in recognition of its importance to parents, children and society. Because it is so fundamental, courts are prohibited from severing the parent child relationship absent clear and convincing evidence of parental unfitness.

Santosky, 455 U.S. at 769-70. Thus, normally, when parents (biological, adoptive, or a combination of biological and adoptive) separate, the parents retain parental rights, and the children retain a right to a relationship with both parents, absent a showing that contact is harmful to the child. *See* AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 2.02 (2005), LexisNexis. But in this case, the Alabama Supreme Court terminated V.L.'s parental rights completely, treating the adoption as a nullity. The Alabama court's decision harms children, traumatizes adoptive parents, and destabilizes families. Awareness that adoption decrees are not truly final will make it more difficult for adoptive parents and their children to form the mutually reinforcing psychological and emotional bonds that are so critical to children's well-being. *See Ratliff v. Meltzer*, 487 N. E. 2d 836 (Ind. Ct. App. 1986).

A. The Alabama Supreme Court Decision Has a Far Reaching and Detrimental Impact on Children.

A rule that permits a court to refuse to recognize and enforce an out of state adoption decree has detrimental consequences for children. If there is one principle undergirding child and family law, it is the importance of stability and continuity to the welfare of the child. *Stanley v. Illinois*, 405 U.S. 645, 652-53 (1972) ("[T]he State registers no gain toward its declared goals when it separates children from the custody of fit parents.") *Lehman v. Lycoming County Children's Servs.* Agency, 458 U.S. 502, 513-14 (1982); Children need stability in order to form

strong bonds essential to their physical and psychological development. JOHN BOWLBY, ATTACHMENT AND LOSS, 365 (2d ed. 1982). Quintessential to the development of a child is a nurturing relationship with their caregiver. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 229–66 (Jack P Shonkoff & Deborah A. Philips eds. 2000). It is irrelevant whether the attachment is to a biological relative. Indeed, a 1985 study by Singer et al. found no differences in mother-infant attachment between nonadopted and adopted pairs, at least in intraracial adoptions. Leslie M. Singer, David M. Brodzinsky. Douglas Ramsay, Mary Steir and Everett Waters, *Mother-Infant Attachment in Adoptive Families*, 56 Child Dev. 1543 (1985). What matters is that the attachment figure is an adult who, "on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs, as well as the child's physical needs." JOSEPH GOLDSTEIN, ET AL., BEYOND THE BEST INTERESTS OF THE CHILD 98 (2d ed. 1979). These relationships are fundamental to the normal development of a child's body and brain. *Id.* at 5.

Once established, continuity in such relationships is critical to the child's continued development. Children deprived of contact with a parent to whom they have become attached "not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful." *Id.* at 33. Instability in the parent's life can cause an imbalance in the child's life, which disrupts the secure attachments that have formed.

COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 234 (Jack P Shonkoff & Deborah A. Philips eds. 2000). And the deprivation of a parent can cause tremendous emotional and psychological damage to the child. Development of the child depends on both stability and flexibility in the child's life. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 90 (Jack P. Shonkoff & Deborah A. Philips eds. 2000).

B. Imperiling the Finality of Adoption Has Significant Impact on Adoptive Parents and the Stability of Families.

Attacks on the finality of adoption pose severe risks of psychological harm not only to the children, but to the parents and the entire family.

Adoptive parents may experience acute distress at the thought of their adoptive child being taken away from them. Judith C. Daniluk & Joss Hurtig-Mitchel, *Themes of Hope and Healing: Infertile Couples' Experiences of Adoption*, 81 J. of Couns. & Dev. 389, 398 (2003). While this distress may be present in the early stages of any adoption, the entry of a final decree marks a passage that enhances secure attachments. *Id.* Parents and children who are faced with the reality that the relationship remains open to attack indefinitely will suffer severe harm to the stability of their relationship and individual well being. *See Ratliff v. Meltzer*, 487 N. E. 2d 836 (Ind., Ct. App. 1986) ("[F]inality of

[adoption] decrees is desirable in order to prevent the emotional strain which would otherwise be imposed upon both the adoptive child and parents, making it difficult for a normal parent-child relationship to develop.") Under the precedent established by the Alabama decision, even an adoptive child and parent who had crossed the bridge to full familial status would be deprived of the security afforded to every other legal parent-child relationship protected by our laws and our Constitution.

Disrupted adoptions lead parents to feelings of failure, guilt and sorrow. Susan Livingston Smith and Jeanne A. Howard, *A Comparative Study of Successful and Disrupted Adoptions*, 65 Soc. Serv Rev. 248, 248 (1991). Prospective parents in disrupted adoptions – adoptions that are not completed, *e.g.*, because the biological parent withdraws consent – report as much grief as the biological parent would experience in giving up the child for adoption, and in fact, losing a prospective adopted child back to the biological parents may be psychologically similar to experiencing the death of one's own biological child. *See* Robin DuRocher, *Balancing Competing Interests in Post-Placement Adoption Custody Disputes*, 15 J. Legal Med. 305, 328 (1994); Janet Hopkins Dickson, Comment, *The Emerging Rights of Adoptive Parents: Substance or Specter?*, 38 U.C.L.A. L. Rev. 917, 967-69 (1991); see also anecdotal accounts at *http://stillstandingmag.com/2014/02/grieving-child-never-died-grief-failed-adoption; https://www.quora.com/What-is-it-like-to-experience-a-failed-adoption*, and *http://www.theatlantic.com/*

sexes/archive/2013/04/the-dark-sad-side-of-domestic-adoption/275370.

The instability and lack of finality in adoption proceedings can bring about tremendous emotional and psychological damage to both the child as well as the adoptive parents. In the best interests of the child, these two categories – finality and stability – are critical in preventing any damage to the parties involved.

III. Many Thousands of Parents and Children are Potentially Affected by the Alabama Decision.

Adoption is woven into the fabric of our society and plays an important role in public policy. The family is the basic unit of society. A society cannot function if the status of parent and child comes and goes as families move from one state to another.

The 2000 Census counted more than 2 million adoptees as members of their adoptive parents' households. Adopted Children and Stepchildren: 2000, Census 2000 Special Reports, www.census.gov/prod/ 2003pubs/censr-6. As of 2008, over 135,000 children were being adopted each year – nearly 2300 in Alabama and nearly 4000 in Georgia. CHILD WELFARE INFO. GATEWAY, *How Many Children Were Adopted in 2007-2008?*, U.S. DEP'T HEALTH & HUMAN SERVS. 10–11 (Sept. 2011), https://www.childwelfare.gov/pubPDFs/adopted0708.pdf. In the same year, the adoption rate per 100,000 adults (i.e., persons aged 18 or older who became adoptive parents) was over 58 nationwide, and

higher in Alabama (over 63); in Georgia it was nearly 54. *Id.* at 12–13.

Although this case involves adoption by an individual who co-parented the child from birth, the case has implications for all types of adoptions. Adoptions with public agency involvement account for about one third of all adoptions. *See* CHILDREN'S BUREAU, *The AFCARS Report*, U.S. DEP'T HEALTH & HUMAN SERVS. 5 (July 2015), http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf. In 2014, 107,918 children were waiting to be adopted from foster care. *Id.* at 1. Both federal and state public policy favors adoption of these children into a safe and caring home if they cannot be reunited with their birth parents within a reasonable time. *See Application of L.L.*, 653 A.2d 873, 888 (D.C. 1995) (discussing the Adoption Assistance and Child Welfare Act of 1986, 42 U.S.C. §§ 670, et. *seq.*, legislative history, treatises and precedents discussing the policy preference not to leave children lingering in foster care). If potential adoptive parents believed that the child's biological parents could challenge the adoption decree at any time, the likelihood that these children would be adopted would drop significantly.

The finality of adoption decrees affects each and every adoptive family and every state agency caring for displaced children. Adoption forms a life-long legal relationship, with implications affecting every area of the law in which parent-child status is important, from public welfare laws to laws on inheritance. The Alabama Court's decision resolves

what should have been a simple custody case by imperiling the stability of adoptions everywhere.

If a final adoption decree can be reopened and declared a nullity eight years after it is entered, prospective adoptive parents may be deterred from adopting in the first instance, and those who complete adoptions would live indefinitely under a shadow of uncertainty. Such a rule directly contravenes and undermines public policies favoring adoption.

The Alabama Supreme Court's decision could have broad, significant and seriously detrimental impact on the lives of parents and children nationwide.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask this Court to grant the Petition for Writ of Certiorari and reverse the decision of the Alabama Supreme Court.

Respectfully Submitted,

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APPENDIX A—LIST OF SIGNATORIES*

Barbara Woodhouse is among the nation's foremost experts on children's rights. She joined the Emory University School of Law faculty in 2009 as the L. Q. C. Lamar Chair in Law. Her scholarship and teaching focus on child law, child welfare, comparative and international family law, adoption, and constitutional law.

Nancy E. Dowd is Professor and David Levin Chair in Family Law at the University of Florida Levin College of Law, and Director Emeritus of the Center on Children and Families. She has published widely on a range of family law issues including adoption and nontraditional families, and participated with other family law scholars in briefs before state and federal appellate courts.

Jamie R. Abrams is an Assistant Professor of Law at the University of Louisville Brandeis School of Law in Louisville, KY. She teaches Family Law, Women and the Law, Torts, and Legislation. Her prior scholarship on reproductive autonomy, gendered citizenship, and masculinities theory has been published in top law reviews, such as the Florida State Law Review, Cardozo Law Review,.and the Yale Journal of Law & Feminism (available at http://ssrn.com/author=862554). She received the University of Louisville's Presidential Exemplary

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* University affiliation of the professors is given for identification purposes only, and implies no endorsement by the universities.

Multicultural Law Teaching Award and she was nominated for the University's LGBT Faculty Ally award.

Libby Adler is a Professor of Law at Northeastern University School of Law. She teaches Constitutional Law, Sexuality, Gender and the Law, Family Law, Administrative Law and Trusts and Estates. Adler has written extensively on sexuality, gender, family and children, including foster care, and draws heavily from queer and critical theory She is a co-editor of the casebook *Mary Joe Frug's Women and the Law* (4th ed.).

Aziza Ahmed is Associate Professor of Law at Northeastern University School of Law She is an expert in laws related to health, gender, and sexuality.

Susan Frelich Appleton is the Lemma Barkeloo & Phoebe Couzins Professor of Law at Washington University School of Law in St. Louis. Her scholarship and teaching focus on adoption and assisted reproduction, family law, and conflict of laws. In addition to publishing many law review articles on these topics, she is co-author of two casebooks, *Modern Family Law: Cases & Materials* (now in its sixth edition) and *Adoption & Assisted Reproduction: Families Under Construction* (2009). She served as an adviser to the American Law Institute's Principles of the Law of Family Dissolution and is now serving as an adviser to the ALI's project on Children and the Law.

Michael Boucai teaches Family Law and Criminal Law at SUNY Buffalo Law School, where he has also offered courses on Law & Sexuality and

Law & Procreation. His scholarship focuses on the legal, political, moral, and social norms that regulate sexuality, reproduction, and various forms of intimate association. He is a graduate of Yale (B.A., history), Georgetown (J.D.), and Cambridge (M.Phil, history), and he clerked for the Honorable Rosemary Barkett on the U.S. Court of Appeals for the Eleventh Circuit.

Kathryn Webb Bradley is a professor of the practice of law, the director of Legal Ethics, and the administrator for the Capstone Project at Duke Law School. She teaches in the areas of legal ethics and family law.

Naomi Cahn is the Harold H. Greene Professor of Law at George Washington University Law School. Her areas of expertise include family law, adoption and reproductive technology, and trusts and estates.

Patricia A. Cain is Professor of Law at Santa Clara University and the Aliber Family Chair in Law, Emerita, at the University of Iowa. She held the Inez Mabie Distinguished Professorship during her first five years at Santa Clara Law (2007-2012). She is the author of *Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement* (Westview Press 2000) and *Sexuality Law, 2nd Edition* (Carolina Academic Press 2009) (with Arthur S. Leonard).

John Culhane is the H. Albert Young Fellow in Constitutional Law and the Co-Director of the Family Health Law & Policy Institute at Delaware Law School (Widener University). With his colleague Alicia Kelly, he is co-author of a new, web-based

Family Law casebook for ChartACourse. He has written extensively on the rights of LGBT families, is a regular contributing writer for Slate, and is the co-author of *Same-Sex Legal Kit for Dummies.*

Martha M. Ertman is the Carole & Hanan Sibel Research Professor at the University of Maryland Francis King Carey School of Law. She teaches Contracts, Commercial Law and Contract Drafting courses and writes about the role of contracts and mini-contracts she calls "deals" in family relationships.

Linda D. Elrod is the Richard S. Righter Distinguished Professor of Law and Director of Children and Family Law Center at Washburn University School of Law. She is also the past Chair of ABA Family Law Section and Editor of Family Law Quarterly since 1992.

Deborah L. Forman is Professor of Law at Whittier Law School, in Costa Mesa, California, J. Allan Cook & Mary Schalling Cook Children's Rights Scholar. Professor Forman earned her J.D. from Stanford Law School. She joined Whittier in 1990 and served as Director of the Whittier Law School Center for Children's Rights from 1999-2007 Her courses include Family Law, Contemporary Problems in Family Law, and Torts. Professor Forman is the author of *Every Parent's Guide to the Law* (Harcourt Brace 1997) and numerous articles. Her scholarship focuses primarily on the problems faced by non-traditional families and those using assisted reproduction.

Theresa Glennon is a Professor of Law at Temple University Beasley School of Law. Her teaching and

scholarship focuses on the legal rights of children and families, with particular focus on family law, education, race and disability. Her family law publications address a wide range of topics, including assisted reproductive technologies, child custody and custody relocation disputes, the effort to harmonize family law in Europe, paternity disputes, second parent adoptions, and the child welfare system. Professor Glennon has been a visiting fellow at the Centre for Family Research at the University of Cambridge, and she is trained as a mediator in divorce and child custody matters and serves as a volunteer mediator for the custody mediation project of Good Shepherd Mediation Program.

Cynthia Godsoe is an Assistant Professor of Law at the Brooklyn Law School. She teaches courses in family law, criminal law, children and the law, professional responsibility, and public interest lawyering. Her scholarship centers on the regulation of intimate behavior and gender roles through family and criminal law, encompassing topics including adoption's role in the path to marriage equality. Before joining the Brooklyn Law School faculty, Professor Godsoe represented children and youth in impact litigation and individual cases in foster care and adoption, juvenile justice, and education matters as an attorney at the Legal Aid Society's Juvenile Rights Division and Advocates for Children, among others.

Leslie Harris is the Dorothy Kliks Fones Professor of Law at the University of Oregon, where she teaches Children and the Law, Family Law, and other courses and directs the Oregon Child Advocacy

Project. She is the co-author of textbooks on Family Law and Children and the Law that are widely used throughout the U.S. She serves on the advisory board for the Oregon Juvenile Court Improvement Project, the board of the Oregon Juvenile Law Training Academy, and the Juvenile Code Revision workgroup of the Oregon Law Commission. She is an elected member of the American Law Institute.

Lisa Ikemoto is a Martin Luther King, Jr. Professor at University of California-Davis School of Law. She has been teaching, researching, and writing on bioethics and family law issues for the past 25 years. She has written extensively on the ways in which race, gender, sexuality, and class norms shape motherhood, family formation, and genetic and assisted reproductive technology use.

Laura T. Kessler is a Professor of Law at the University of Utah and a nationally known expert in two areas: work and family conflict and the legal regulation of non-nuclear families. She is particularly interested in how the law perpetuates gender-based economic inequality. Kessler's scholarship is widely-cited and well-known as providing rigorous, comprehensive, theoretically informed, interdisciplinary analyses of cutting edge issues involving discrimination, families, and work.

Shani M. King has been a member of the faculty at University of Florida Fredric G. Levin College of Law since 2007, where he is Director of the Center on Children and Families. Professor King teaches and writes in the area of children's rights and family law, with a particular interest the role of child's counsel in various contexts, and more generally in

the rights of children and families, especially those from traditionally underserved populations and the public responsibility to protect those rights. Professor King has been active in local, regional and national child welfare and juvenile reform, serving on the board of the Youth Law Center and the Florida Chapter of the National Association for the Advancement of Children, and on the advisory board of Florida Children's First.

Solangel Maldonado is the Joseph M. Lynch Professor of Law at Seton Hall Law School and a Visiting Scholar at Center for Law and Culture at Columbia Law School. Maldonado's research and teaching interests include family law, gender and the law, critical race theory, and international and comparative family law. Her scholarship focuses on the intersection of race and family law and the law's influence on social norms. She is one of the reporters of the American Law Institute's Restatement of the Law, Children and the Law (in progress) and a co-editor of *Family Law in the World Community* (Carolina Academic Press, 3rd ed. 2015) (with D. Marianne Blair, Merle H. Weiner, and Barbara Stark). She also serves on the editorial board of the *Family Court Review.*

Linda C. McClain is Professor of Law and Paul M. Siskind Research Scholar at Boston University School of Law. She teaches Family Law, Children and the Law, and courses in gender and law. She has written extensively about family law, including parental rights and responsibilities. She is co-author of the casebook, D. Abrams et al., *Contemporary Family Law* (West, 4th ed 2015); author of *The Place*

of Families (Harvard University Press, 2006), and co-editor of *What Is Parenthood? Contemporary Debates about the Family* (NYU Press, 20143). She is past chair of the Association of American Law Schools Section on Family and Juvenile Law and is currently on the Executive Board of the Section.

Bernard P. Perlmutter is a Clinical Professor of Law and Co-Director of the University of Miami School of Law's Children & Youth Law Clinic, which represents children in abuse and neglect, foster care, adoption, and other proceedings. He also teaches courses in Family Law, Transnational Family Law, and Children and the Law. Under Professor Perlmutter, The Children & Youth Law Clinic has participated as *amicus curiae* in several landmark Florida appellate cases affirming the rights of children to be adopted by same-sex couples. *See, e.g., In the Matter of the Adoption of D.P.P*, 158 So. 3d 633 (Fla. 5th DCA 2014); *Florida Department of Children and Families v. In the Matter of Adoption of X.X.G. and N.R.G.*, 45 So. 3d 79 (Fla. 3d DCA 2010); and *Embry v. Ryan*, 11 So. 3d 408 (Fla. 2d DCA 2009).

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